

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Case No. RC-22-233

OAH File No. 20220259

Coyote Creek Mining Company, L.L.C.
Revision No. 12, Permit NACC-1302
Application

TRANSCRIPT OF
INFORMAL CONFERENCE

Taken At
State Capitol
Bismarck, North Dakota
October 12, 2022

BEFORE THE HON. HOPE L. HOGAN
-- ADMINISTRATIVE LAW JUDGE --

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A P P E A R A N C E S

MR. JOHN M. SCHUH
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North Dakota Public Service Commission
State Capitol
Bismarck, North Dakota 58505-0480

FOR THE PUBLIC SERVICE
COMMISSION.

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FOR CASEY AND JULIE
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FOR COYOTE CREEK MINING
COMPANY, L.L.C.

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1 (The proceedings herein were had and made
2 of record, commencing at 9:28 a.m., October 12,
3 2022, as follows:)
4 ALJ HOGAN: All right. It's 9:28 a.m. on
5 October 12th, 2022, in the PSC hearing room at the
6 State Capitol in Bismarck, North Dakota.
7 This is the time and location scheduled
8 for an informal conference in PSC Case No.
9 RC-22-233. My office, Office of Administrative
10 Hearings, has designated this matter as OAH File
11 No. 20220259.
12 This conference is being held pursuant to
13 a notice of informal conference and notice of
14 informal conference date change issued by the
15 Public Service Commission.
16 My name is Hope Hogan, and I have been
17 designated as the administrative law judge for this
18 matter. I've been asked to conduct this conference
19 and then issue a recommended decision to the Public
20 Service Commission.
21 I started passing around an attendance
22 sheet and I'd ask that everybody sign that so that
23 we have a record of everybody that attended today.
24 I'd also ask that everyone check their phones to
25 make sure they're turned off or silenced. Yeah.

4

1 This is an informal conference requested
2 under North Dakota Century Code Section 68-14.1-19.
3 On March 17, 2022, the PSC received from
4 Coyote Creek Mining Company, L.L.C., an application
5 for Revision No. 12 to the surface mining permit
6 NACC-1302. Revision No. 12 changes the post-mine
7 topography on 280 acres in Sections 6 and 7,
8 Township 142 North, Range 88 West and Section 1,
9 Township 142 North, Range 89 West. The
10 introductory, legal, financial, compliance
11 information, environmental, operations and
12 reclamation sections have been revised.
13 Casey and Julie Voigt filed comments, an
14 objection and request for informal conference dated
15 August 29th, 2022. The concerns raised by the
16 Voigts were generally described as dust, projected
17 topsoil and subsoil respread depths, reclamation
18 variance, and the timing of revegetation.
19 I'm now going to ask the parties to make
20 their appearances for our record. Mr. Braaten, if
21 you want to go first, introduce yourself and your
22 clients.
23 MR. BRAATEN: Derrick Braaten with Braaten
24 Law Firm, Bismarck, North Dakota, appearing on
25 behalf of Casey and Julie Voigt. Also with me is

5

1 Lisa Andersen, another attorney in the firm, and
2 Desirae Zaste, my paralegal.
3 ALJ HOGAN: All right. Thank you.
4 Mr. Mann, do you want to state your
5 appearance for the record and introduce who you
6 have with you today.
7 MR. MANN: Yeah. Thank you, Your Honor.
8 Wade Mann -- Wade Mann, P.O. Box 2798, appearing on
9 behalf of Coyote Creek Mining Company. I have
10 Jeremy Eckroth, the environmental manager with the
11 Coyote Creek Mine, and Donn Steffen, the production
12 manager with the mine.
13 ALJ HOGAN: Thank you. And, Mr. Schuh, do
14 you want to state your appearance for the record
15 and introduce the staff members with you today.
16 MR. SCHUH: Yes, Your Honor. John Schuh
17 on behalf of the Reclamation Division. I did make
18 a number of our experts available based upon the
19 (indiscernible) I've received. We have Brandon
20 Myran, we have Monty Johnson and Jonathan Emmer and
21 Guy Welch.
22 ALJ HOGAN: All right. Thank you. It
23 does not appear that we have any members of the
24 public attending our hearing today.
25 We generally spoke about hearing procedure

6

1 before we began today, and it's my understanding,
2 Mr. Braaten, you're going to present first,
3 followed by Mr. Mann and then, Mr. Schuh, you'll
4 present any additional information or some general
5 information from PSC staff.
6 Is there any questions or concerns or
7 remarks on procedure?
8 MR. BRAATEN: I think the only thing I
9 would add that we had discussed previously was that
10 we would each do a short presentation, but then
11 follow that up with, you know, some amount of
12 question and answer primarily, I think, with the
13 PSC staff but --
14 ALJ HOGAN: Sure.
15 MR. BRAATEN: -- I just want to note that.
16 ALJ HOGAN: All right. And with
17 questioning, you know, this is -- this is meant to
18 be informal. If there's objections, we can record
19 those for the record, but my understanding is
20 generally broad scope for information and
21 everything is going to come in.
22 MR. BRAATEN: And I'm not planning to
23 cross-examine anyone. I really do just have some
24 questions.
25 ALJ HOGAN: All right. Do you have any

7

1 exhibits or documents that are getting entered
2 today?

3 MR. SCHUH: We do have a number of
4 exhibits that will be coming in paper format, but
5 they are actually already provided in the computer.
6 I know the Voigts have a video. Are there other
7 documents as well?

8 MR. BRAATEN: Yeah. So part of our
9 initial presentation will be a video with some
10 pictures. And then beyond that, I had mentioned to
11 John that I think, to the extent there's any
12 exhibits, it's probably just using some of the maps
13 as a frame of reference for everyone.

14 ALJ HOGAN: Okay. All right. And are we
15 okay with just electronic -- I'm asking you, Mr.
16 Schuh, as far as a record for this case, if that's
17 acceptable or if he wants something hard for the
18 official.

19 MR. SCHUH: For the informal conference,
20 as long as we have the actual on files, that will
21 be fine --

22 ALJ HOGAN: Okay.

23 MR. SCHUH: -- for the informal hearing.
24 The one thing I did want to bring up as well just
25 right before we begin, I think it would be helpful

8

1 if Jonathan Emmer would just walk through the
2 different variance areas on a map just to kind of
3 set the stage that we know exactly which areas
4 we're talking about as this kind of moves forward.

5 ALJ HOGAN: Sure. Mr. Mann, did you have
6 any documents or exhibits?

7 MR. MANN: We have one map we intend to
8 use. That's it.

9 ALJ HOGAN: Okay. All right. Any other
10 preliminary matters we need to discuss?

11 MR. BRAATEN: Nothing from us.

12 ALJ HOGAN: Mr. Mann, do you have
13 anything?

14 MR. MANN: No, Your Honor.

15 ALJ HOGAN: Mr. Schuh?

16 MR. SCHUH: No, Your Honor.

17 ALJ HOGAN: All right. Mr. Emmer, if you
18 want to start.

19 MR. EMMER: All right. So this is out of
20 the permit. It's just their reclamation schedule
21 and variance map. So starting off in the legend,
22 the green hatching is variance area 1 up in Section
23 25, a little bit into 36. The blue is variance
24 area 2. The cyan color is variance area 3. And
25 this gray area over here is variance area 4.

9

1 Variance area 5 is the magenta. 6 is hard to see,
2 but it's the very small area, the Northwest Quarter
3 of Section 6. It's purple. And then variance area
4 7 is this light orange color. So the main variance
5 we'll really be talking about is variance area 7
6 down here in Section 6.

7 MR. SCHUH: And this will probably be
8 easier to see on the other maps, but we just in
9 generality provide -- point out where Mr. Voigt's
10 property is in relation to these --

11 MR. EMMER: -- dits.

12 MR. SCHUH: This is is where his home is.

13 MR. EMMER: In the central area of Section
14 31.

15 MR. SCHUH: Okay.

16 ALJ HOGAN: All right. Thank you.
17 Mr. Braaten, you can go ahead.

18 MR. BRAATEN: Okay. So as I had indicated
19 earlier, our plan is I'm going to have a video
20 played and Mr. and Mrs. Voigt will explain a little
21 bit as the video goes what we're looking at and
22 that's going to cover some of the historic concerns
23 and bring us up to speed. And we have some other
24 pictures that we'll have them explain briefly, and
25 then I'm going to just do sort of a summary of some

10

1 of the other issues that we'd like to primarily
2 just gather some information about.

3 So can we have you pull the -- actually, I
4 might need to come over, I think. It would be
5 under dust. There should just be one MP4.

6 UNIDENTIFIED SPEAKER: I think it's at the
7 bottom under damages.

8 MR. BRAATEN: Yeah. So I'm going to let
9 you go ahead, you two, just sort of once it starts
10 playing wherever -- let us know what we're looking
11 at.

12 MR. VOIGT: I thought the staff had kind
13 of seen most of this, but I see most of the staff
14 is different so -- other than Guy, this should be
15 new to most people.

16 This is an area that's supposed to be an
17 access corridor to move livestock next to a
18 stockpile. This is a haul road with haul trucks.

19 MRS. VOIGT: This is looking back towards
20 the ranch.

21 MR. VOIGT: You can see the ranch in the
22 background, yeah -- or the yard. Sorry. All the
23 area is the ranch.

24 MRS. VOIGT: It's all ranch.

25 MR. VOIGT: Most of the traffic is to the

11

1 west and uphill from the valley that we live in, so
 2 this is our yard and that's where the dust likes to
 3 settle because of the predominant west and
 4 northwest winds and the mining activity being to
 5 the west and uphill.

6 I guess we had used some of these pictures
 7 in our previous hearing, but not the full video.

8 A lot of the dust to the yard is caused
 9 due to the close proximity of the stockpile to the
 10 yard. Aside from the obvious eyesore, it is a
 11 health concern for my family and my livestock.

12 There's a pretty good visual of where the
 13 stockpile is compared to the yard.

14 MRS. VOIGT: This is directly above the
 15 yard.

16 MR. VOIGT: A lot of these pictures it's
 17 hard to see because the cameras actually filter
 18 some of the dust out, but it obviously looks worse
 19 in person than it does in these pictures.

20 That's like a Sunday where they're not
 21 even working and just the wind is moving the
 22 stockpiles and spoil piles.

23 MRS. VOIGT: This is like three years
 24 later from the previous pictures. It looks
 25 similar. Just an ongoing.

12

1 MR. VOIGT: Now we go into some access
 2 issues where the fencing and disturbance areas are
 3 not conducive to manage my operation.

4 MRS. VOIGT: You see a gate there and how
 5 it's -- you can't get to the gate because of the
 6 power cable. It's not showing.

7 MR. VOIGT: Another gate in the background
 8 with no access. This is an area to move cattle and
 9 to the left of the fence there's about a
 10 hundred-foot pathway, slope up the hill that was
 11 inaccessible so we were forced to use rougher
 12 terrain to try and move our cattle.

13 MRS. VOIGT: So they had to climb this to
 14 get out of this pasture to get to our adjacent
 15 pasture. This is what was left for our access to
 16 that other pasture.

17 MR. VOIGT: Another area where they pushed
 18 the fence down into the trees to reduce access.

19 This is an area of some washouts that
 20 were -- to the mine side of the fence, the washouts
 21 were nonexistent, but to our access side of the
 22 fence, the washouts were two feet wide and a foot
 23 deep or foot and a half deep. Narrow pinch point
 24 for the livestock. Drainage cut into the
 25 nondisturbed area.

13

1 MRS. VOIGT: Here you can see the fence
 2 back into the trees and it comes back out to where
 3 that was our accesses. Here you can see the
 4 four-wheeler and how the fence goes back into the
 5 trees and back out to where you can't get through
 6 anymore. Same with these on the fence curves, cuts
 7 you off at the tree row.

8 There you can see the fence on the other
 9 side in the background, how it -- along the trees
 10 where you can't get through.

11 MR. VOIGT: These are our fields next to
 12 our yard that have subirrigation, potential
 13 irrigate, and this would be the fields when they
 14 are flooding so they're obviously flood-irrigated
 15 also.

16 MRS. VOIGT: This is right out in front of
 17 our house, the road coming in to our house, the
 18 fields.

19 MR. VOIGT: Some old irrigation equipment
 20 from back in the '60s, the pump and discharge
 21 lines.

22 MR. BRAATEN: Okay. So some of the folks
 23 here have seen some of these pictures and the video
 24 before, and generally what it sums up is issues
 25 with dust, with access and lack of access.

14

1 One thing that wasn't clear on the video I
 2 want to have you cover real quick, with respect to
 3 the map of the mine we were looking at, that very
 4 first picture showed cattle in the dust trying to
 5 access going north along the power line. Where was
 6 that generally in the mine?

7 MR. VOIGT: That would be on the west
 8 central part of the mine, so it would be on the
 9 very west edge of Section 36 next to County Road
 10 13. There's a topsoil and subsoil pile that the
 11 corridor went alongside.

12 MR. BRAATEN: And so as we indicate in the
 13 comments, the other concerns that were raised
 14 specifically with this revision related to the
 15 variances and specifically that the variances are
 16 now without limitation in time and it's
 17 particularly concerning because several of these
 18 areas are right above the Voigt house. And so one
 19 of the questions we have and concerns we have is,
 20 whether the PSC grants those variances or not, we
 21 want to know what is going to be done to
 22 revegetate, to mulch, to crimp in mulch, to do
 23 whatever we can to try and stabilize those soils up
 24 above the house.

25 And then additionally the soil respread

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1 depths, there's provisions in the coal lease, for
 2 example, that require the same amount to be brought
 3 in on the Voigt property and it appeared there may
 4 be some attempt to reduce the respread depths on
 5 the Voigt property, and so we have concerns about
 6 that, but also recognize that we don't fully
 7 understand policy memo 17 and some of those
 8 calculations. So we basically just want to learn
 9 what the PSC is doing there and make sure we
 10 understand what that means.

11 Some of these other issues are ongoing
 12 issues and they're part of every permit revision
 13 because they're things that are -- they were raised
 14 in the initial permit application, the very first
 15 one back in, I think, 2014 and the Voigts have been
 16 involved in a couple of the revisions since then
 17 and raised some of these same concerns.

18 So with that, I think, you know, that's
 19 essentially what the concerns are from the Voigts.
 20 And I think, you know, with respect to the decision
 21 that comes out of today's hearing, we still have
 22 some questions, but one of the biggest concerns
 23 that we're addressing and objecting to is the
 24 indefinite time period attached to these variances,
 25 and that's a real big concern for us because it

16

1 impacts not just, you know, overall reclamation,
 2 but the Voigts have a contract by which they
 3 receive loss of production payments and the mine's
 4 position is that they don't need to pay post-mining
 5 and so this has a very real economic impact on the
 6 Voigts as well while we're pushing out this
 7 reclamation. It's basically land taken out of
 8 production that they're not getting any payments
 9 for, and that's not what we anticipated entering
 10 into that contract. And so in a very real way
 11 these decisions have not just an impact on the
 12 overall reclamation process but on the Voigts'
 13 relationship through their coal lease.

14 So those are the general concerns we're
 15 going to bring up. And honestly with respect to
 16 some of it, I think we need more information about
 17 what those revegetation standards -- or if there
 18 will be revegetation and how respread depths are
 19 working and some of those plans before we know
 20 more, but those are sort of the general concerns
 21 we're hoping to have a discussion about today.

22 So with that, I think that concludes --
 23 well, actually no. I'm sorry. We do need -- I
 24 forgot, we've got to cover the drainage issue as
 25 well.

17

1 So one other issue I want to cover briefly
 2 -- sorry.

3 MR. SCHUH: Monty Johnson?
 4 MR. VOIGT: No.

5 MR. BRAATEN: Matt. Sorry. Matt, could
 6 you pull -- okay. So we got to go through a couple
 7 more pictures on here, and I think we can just kind
 8 of click through the pictures and I'll have
 9 Mr. Voigt just explain what we're looking at with
 10 each of these pictures related to the dust and
 11 video.

12 MR. VOIGT: So this is just the
 13 verification of the ongoing issues with dust.

14 MR. BRAATEN: Okay. And when
 15 approximately was this picture taken?

16 MR. VOIGT: I believe in 2021. I would
 17 have to double-check my phone records.

18 MR. BRAATEN: Let's go to the next
 19 picture. And approximately when was this taken?

20 MR. VOIGT: I believe this one was taken
 21 in 2020, in the fall of the year.

22 Another photo from 2020. Dust and then it
 23 accumulates on the vehicles. When we get dew in
 24 the morning, it turns to mud so it's not very
 25 pleasant leaving the yard some mornings.

18

1 MR. BRAATEN: Okay. Let's go to the next
 2 picture, please, Matt.

3 MR. VOIGT: This is a stockpile in Section
 4 30, and I believe that is kochia and Russian
 5 thistle growing on the stockpile.

6 MR. BRAATEN: Do you -- well, the other
 7 thing I should flag that I haven't mentioned is we
 8 do have a couple questions -- you know, it kind of
 9 comes back to dust, but also concerns whether the
 10 mine has SWPs and is following SWPs for things like
 11 this and whether there's additional things like
 12 straw wattles or mulch that could be done to start
 13 stabilizing some of this when you don't have a full
 14 revegetation.

15 So let's -- can we go to the next picture,
 16 Matt, please.

17 MR. MANN: Are these photos here?
 18 MR. BRAATEN: They are, but I don't think
 19 they're going to open on here and I think we
 20 converted those so you can skip the two HEIC
 21 extensions.

22 MR. VOIGT: More dust on a vehicle. And I
 23 believe that one was on July 29th.

24 MR. BRAATEN: Okay.

25 MRS. VOIGT: (Inaudible.)

19

1 MR. BRAATEN: Then there's one other issue
 2 I forgot to mention when I said we were going to
 3 cover a few different issues here, but it came up
 4 in the inspection report that the PSC did recently,
 5 and that was issued, I think, in mid-August. And
 6 so, Matt, if you pull out of this file folder,
 7 there should be another one that says drainage --
 8 or discharge. And then we'll just click through
 9 these pictures. And, Casey, can you just --

10 MR. VOIGT: Water line to provide water to
 11 my cattle. It's a surface water line, kind of a
 12 poor design and obviously has failed more than
 13 once.

14 This is water in Section 6 that is dammed
 15 up from the mine and then backed up onto the
 16 topsoil into my pastures.

17 Another view of the same pond that shows
 18 you how it is actually stopped by the road used by
 19 the mine. The road serves as a dam.

20 This is after the pond has been pumped
 21 down, which, I believe, I reported it to the mine
 22 on July 15th, and this was approximately the 25th
 23 of July or something like that that it was pumped
 24 down and the grass is dead and silt on top of the
 25 topsoil.

20

1 I guess the fence that was in that picture
 2 was completely underwater. So the previous picture
 3 of all the water showed the fence, but it just was
 4 not visible because the water was higher than the
 5 fence.

6 This was reported to me by a neighbor, had
 7 concerns with the dark water in the creek and
 8 somewhat of an odor to the water. He wanted to
 9 know what I knew about it. I told him I didn't
 10 know much about it and I told him he should call
 11 the mine and ask them questions. I believe the
 12 date of this photo is July 28th, and it was after
 13 normal working hours at the mine so I believe my
 14 neighbor called the mine the morning of the 29th,
 15 and that would have been a Friday, so the pumping
 16 continued over the weekend, then on Monday the
 17 pumping was shut down from pond 0603, and then it
 18 was approximately ten days later before they
 19 started the pumping again. And at that time the
 20 creek stayed a lot clearer and I did not detect any
 21 odor from the water at that time. I'm assuming
 22 there should be discharge records from the mine
 23 that would validate that.

24 MR. BRAATEN: Okay. So as I attempted to
 25 say earlier, that does conclude our portion of just

21

1 the presentation and then, as I said, we'll
 2 probably have some follow-up afterwards.

3 MR. VOIGT: I guess I should circle back a
 4 little bit on that with the stream water being that
 5 dark. That was being pumped from pond 0603.
 6 Previous photos of the ponds that were to the west
 7 side of Section 6, those sometime after July 15th
 8 were discharged into pond 0603, so there was a
 9 large amount of water pumped into pond 0603 shortly
 10 before pond 0603 was discharged.

11 ALJ HOGAN: You said that photo was taken
 12 on July 28th. Is that this year, 2022?

13 MR. VOIGT: Yes, 2022.

14 ALJ HOGAN: Just to follow up on that
 15 first video and photos, I noticed some of the
 16 photos were date-stamped 2016, 2017. Was the video
 17 from that time period, too?

18 MR. VOIGT: The --

19 ALJ HOGAN: There was a video in the very
 20 beginning.

21 MR. VOIGT: Yes, that would all have been
 22 in the early stages of mining.

23 MR. BRAATEN: I think whatever the latest
 24 picture on there, I think it might have been 2018,
 25 it was -- basically everything in the video would

22

1 have been from around or before that time.

2 MRS. VOIGT: 2019 where there was
 3 (indiscernible) --

4 MR. VOIGT: Yeah, I think there was a '19.
 5 MRS. VOIGT: -- snow and dust.

6 MR. BRAATEN: That makes sense because
 7 then the follow-up pictures were from 2020, '21 and
 8 '22.

9 ALJ HOGAN: And is that still an accurate
 10 reflection of how things are today?

11 MR. VOIGT: It's still ongoing. I cannot
 12 quantify how much dust has increased or decreased.
 13 I have no way of monitoring that, I guess. Maybe
 14 the mine can put some quantification.

15 ALJ HOGAN: And I'm not asking for
 16 anything exact, but like the dust that shows in the
 17 photos and the videos, are you still seeing that
 18 even today?

19 MR. VOIGT: Yes, that's some of the
 20 pictures that we followed up with. I would say --
 21 excuse me for not knowing the stockpile number
 22 that's directly above our house, but that pile is
 23 becoming less active, but it is very obvious what
 24 days they are using that stockpile.

25 ALJ HOGAN: All right. Thanks. Mr. Mann,

23

1 did you have any questions?

2 MR. MANN: I did have a few questions.

3 And I guess I'm a little bit confused on some of

4 this. You got the request for the informal and,

5 you know, it addressed some specific issues, but

6 then looking at the video, you know, we're looking

7 at -- back at, you know, these videos from 2016.

8 Many of these exact same issues were previously

9 addressed at a hearing -- informal conference and a

10 hearing in 2019, I believe, and now we've got the

11 video. And on the access, is that still an issue?

12 I don't really understand. I mean, apparently it

13 was an issue in 2016 when we took the video. I

14 thought that was addressed. We had a hearing on

15 it. That's all been decided. We're bringing that

16 up again, I didn't see it in the request for

17 informal.

18 But I'm trying to understand, are these

19 exact same access issues the exact same? There was

20 a picture that said irrigation. I mean, is there

21 some sort of issue there that they're claiming? I

22 don't -- I'm trying to get a better sense of what

23 we're looking at, what we're discussing today and

24 if it's the exact same thing that we previously

25 addressed in 2019 ad nauseam.

24

1 And then with respect to the video, again,

2 much of it was 2016, '17, '18. I think we need

3 foundation on that, you know, who took that. We've

4 got some date stamps. That was helpful to get a

5 perspective of when those videos were taken, but in

6 particular the subsequent -- like the photographs

7 after that time where Mr. Voigt indicated those

8 were 2020, 2021 time frames, we need to -- we need

9 foundation on that. We need to know who took them,

10 when -- date, time, where they were taken from, you

11 know, any conditions, you know, wind conditions so

12 we can, you know, address source, those types of

13 issues. There's really no foundation for any of

14 that. I mean, just throwing up pictures of dust on

15 a vehicle and suggesting that it, you know, came

16 from a certain source without any foundation for

17 that, it's not particularly helpful. So we would

18 be looking for that.

19 I mean, those are primarily the questions.

20 It's, you know, what are we looking at today? You

21 know, are we dredging up the same issues from the

22 past that have already been addressed or are we

23 really focusing on the reveg issues that they've

24 indicated. We're prepared to address those, the

25 variances, the respread revegetation. That's fine.

25

1 We weren't really prepared to go into things that

2 have already been settled. So those are primarily

3 the questions that I have.

4 ALJ HOGAN: Mr. Braaten, I don't know, can

5 you address that? Are we looking at the same

6 access issues?

7 MR. BRAATEN: Nothing -- you know, let's

8 see. Okay. Dust. Let's take an example.

9 Variance 7, if you don't revegetate variance 7 and

10 the variance is granted, there's going to be more

11 dust in the Voigt yard. These issues relate to

12 everything the mine does and they're part and

13 parcel of what the mine does. And so when we're

14 talking about variances and whether we're going to

15 grant variances, the reason we're concerned is the

16 dust.

17 And so when we're talking about these

18 issues, no, we're not dredging up the past. We

19 showed the past and then we showed the present, and

20 what we're saying is that these issues are the

21 reason that things like variance 7 or soil respread

22 depths are important to us and we want the PSC to

23 understand that these are ongoing issues that the

24 Voigts are facing on a day-to-day basis and those

25 are the reason that they have specific concerns

26

1 about things like granting variance requests or

2 something like that.

3 MR. MANN: And the mine is prepared to

4 address the revegetation and, you know, to the

5 extent that has impacts on dust, we certainly

6 understand that and appreciate that. But bringing

7 up things from 2016 when conditions were completely

8 different, I mean, really not really indicative or

9 reflective of anything that's going on today,

10 that's not particularly helpful from the mine's

11 standpoint. But, yeah, I understand the position

12 and we are prepared to address those revegetation

13 issues.

14 ALJ HOGAN: Then just to follow up on the

15 more recent photos, I understood that one of you

16 two took those photos, but maybe you want to

17 clarify.

18 MR. VOIGT: All photos are either from

19 myself or my wife, Julie.

20 ALJ HOGAN: Okay.

21 MR. VOIGT: And they are all of our

22 property. They can all be validated and verified.

23 I just thought being's it was informal, I didn't

24 have to do that today. If this does become formal,

25 we can verify all of that. They were just simply

27

1 to point out the fact that the same issues from
 2 back in '16, '17, '18 still exist today.
 3 ALJ HOGAN: And I think, Mr. Mann, since
 4 we're informal, I mean, I wrote down some years of
 5 when some of those photos were taken. I know we
 6 don't have an exact date or anything too specific,
 7 but I think for the purpose of this proceeding
 8 that's probably sufficient.
 9 MR. MANN: I understand, yeah.
 10 ALJ HOGAN: Okay. All right. Anything
 11 further?
 12 MR. MANN: Well, we are prepared to have
 13 Mr. Eckroth address just some of the specific
 14 questions --
 15 ALJ HOGAN: Sure.
 16 MR. MANN: -- just briefly that were laid
 17 out in the request for the informal.
 18 ALJ HOGAN: And we'll get to that. I'm
 19 just going to see if Mr. Schuh has any questions.
 20 MR. MANN: Oh, we're still just -- any
 21 follow-up on questions from Mr. Voigt?
 22 ALJ HOGAN: Yeah. Yeah.
 23 MR. MANN: No.
 24 ALJ HOGAN: Then we'll move to you.
 25 MR. MANN: Yep. We're good.

28

1 MR. SCHUH: I do have just a couple
 2 questions and -- I mean, we're familiar with a lot
 3 of these photos from the previous proceeding and
 4 there are a number of issues that were brought up
 5 and this kind of -- I guess kind of dovetails on
 6 Mr. Mann's, but was the purpose not necessarily to
 7 address these issues, but to make the Commission
 8 aware of some of these issues? For example, we
 9 didn't bring somebody down here for surface water,
 10 we didn't bring anybody here for drainage, I think
 11 to be able to address these issues from that
 12 standpoint. So, I mean, I guess, if the purpose is
 13 to inform us, I mean, that's -- that's great. It's
 14 helpful. We actually appreciate knowing these
 15 concerns.
 16 To the extent that we're really looking to
 17 address it with some sort of result of this
 18 informal conference, I guess there would be an
 19 issue to a degree with that because, of course, not
 20 all parties have been notified what to bring. We
 21 haven't had the opportunity to bring the expertise.
 22 We could have brought the records down. We could
 23 have brought said information. We could have
 24 brought a surface water person as well. So I guess
 25 that's something you might be able just to give

29

1 some explanation of the purpose of it.
 2 And I guess I would say that -- I guess to
 3 the extent that the dust issue really is related to
 4 the revegetation to show us the reason why you have
 5 concerns with the revegetation, certainly that's
 6 understandable as well, but I know we did have this
 7 discussion pretty extensively back in, I think it
 8 was, 19-189 and 19-120, I believe, back in 2019,
 9 and there were -- a lot of these issues related to
 10 jurisdiction, and so forth, were kind of addressed
 11 there as well. So I guess if you could just kind
 12 of walk me through the actual purpose of
 13 demonstrating these and showing us some of these
 14 items, that would be helpful.
 15 MR. BRAATEN: Which ones? Like the
 16 discharge, you mean?
 17 MR. SCHUH: Why don't we start -- start
 18 with the ones that were outside the notice. I
 19 think there was the -- the dust issue you provided
 20 how it relates to what we're discussing today.
 21 There's the access, kind of brought up some
 22 irrigation photos. The stockpile, I mean, that had
 23 to do with revegetation. Then the last one, I
 24 think, is really the drainage and the surface water
 25 runoff. Those were the items all outside what

30

1 we've noticed for the informal.
 2 MR. BRAATEN: Yeah. And so the drainage
 3 issue, honestly, the PSC staff did an inspection in
 4 August and we haven't seen such an inspection
 5 except for the last time we asked for an inspection
 6 leading up to the informal conference. And so from
 7 our perception, that was part of, you know, doing
 8 an inspection related to this informal conference,
 9 and so -- and whether it was or not, part of the
 10 reason for bringing these things up now is that
 11 just because of the timing it was like mid-August
 12 that we got that report of the investigation that
 13 PSC staff did and that corresponded with some stuff
 14 that the Voigts were seeing out there in July. And
 15 so I didn't know if the intent from the Commission
 16 was that what they were covering in their
 17 investigation report was what they were going to be
 18 covering at the informal conference, informal
 19 hearing, and so we wanted to make sure we were
 20 covering the issues that they were raising and
 21 inspecting during that inspection.
 22 MR. SCHUH: Sure.
 23 MR. BRAATEN: I -- obviously we didn't,
 24 you know, think of that as part of this until we
 25 saw that investigation report, and that's partly

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1 where that came from, is just kind of responding to
 2 what was in there and making sure you had the
 3 information on those issues from the Voigts as
 4 well.
 5 MR. SCHUH: Sure.
 6 MR. BRAATEN: The irrigation equipment, I
 7 fully understand what Wade's position is and the
 8 Commission's as well. In terms of the AVF
 9 determination, we continue to feel it was the wrong
 10 determination and may submit additional information
 11 just to apprise the Commission of additional facts
 12 related to that determination and the ongoing
 13 revisions to the permit.
 14 MR. SCHUH: Okay.
 15 MR. BRAATEN: Did I miss any?
 16 MR. SCHUH: There was the access issue.
 17 But, you know, I guess we can come back around and
 18 do some of this when we have an opportunity to just
 19 kind of provide, I guess, the context of maybe how
 20 these inspections work, how revisions work in the
 21 first place from our standpoint because, you know,
 22 we do inspections frequently with the mines. We
 23 review their revisions and we review all the
 24 variances as well on a continual basis and we don't
 25 bring them to informal conferences. We address

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1 them -- unless we need to, we can't come to a
 2 conclusion, come to an agreement that we would
 3 actually probably issue a formal hearing on our own
 4 behalf, you know, against the mine or something
 5 like that.
 6 So from that standpoint how this informal
 7 conference as we viewed it was really to address
 8 the concerns that you brought forward, not to
 9 address the concerns that we may have outside of,
 10 you know, I guess, what you expressed as concerns
 11 for the informal conference. And so from that
 12 standpoint, I guess, we'd be happy to continue the
 13 conversation on that, but for the purposes of just
 14 addressing the issues today, I think that we would
 15 -- I think we'd be concerned without the
 16 opportunity to provide people who could actually
 17 come in and speak to it to have to address it
 18 within this order.
 19 MR. BRAATEN: Understood.
 20 ALJ HOGAN: All right. Anything further
 21 at this time, Mr. Braaten?
 22 MR. BRAATEN: No, Your Honor.
 23 ALJ HOGAN: All right. Mr. Mann, you're
 24 on.
 25 MR. MANN: Do you mind -- with respect to

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1 one of the new issues that was brought up, can I
 2 have just a couple minutes --
 3 ALJ HOGAN: Sure.
 4 MR. MANN: -- just very briefly to consult
 5 with my client on that?
 6 ALJ HOGAN: Yep. Absolutely.
 7 (Discussion had off the record.)
 8 ALJ HOGAN: All right. Go ahead, Mr.
 9 Mann.
 10 MR. MANN: Yes. I'm going to have Jeremy
 11 Eckroth give some testimony, I guess. And, Jeremy,
 12 if you can just introduce yourself, state your name
 13 and your address.
 14 MR. ECKROTH: Yeah, Jeremy Eckroth, 6502
 15 17th Street Southwest, Zap, North Dakota 58580.
 16 MR. MANN: And can you tell us who you
 17 work for?
 18 MR. ECKROTH: Coyote Creek Mine.
 19 MR. MANN: And what's your position?
 20 MR. ECKROTH: I am the environmental
 21 manager at Coyote Creek.
 22 MR. MANN: And just briefly give us, what
 23 are some of your primary duties at the mine?
 24 MR. ECKROTH: Okay. Just a little
 25 background, I -- I started at Coyote Creek in

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1 September of 2020 as the environmental manager.
 2 Prior to that I was at the Falkirk Mine for a
 3 little over 20 years in various positions in the
 4 environmental department, all the way up to the
 5 environmental manager there as well.
 6 So basically my job at Coyote Creek is to
 7 ensure environmental compliance. I oversee all
 8 environmental affairs, including permitting,
 9 compliance reporting, and landowner relations to
 10 name a few things.
 11 MR. MANN: And, Jeremy, are you familiar
 12 with Mr. and Mrs. Voigt and the issues that they've
 13 raised with respect to the revision 12 and
 14 operation of the mine?
 15 MR. ECKROTH: Yep, I am.
 16 MR. MANN: Let's move on into the specific
 17 objections that they've raised on the revision
 18 beginning -- they've identified the first one as
 19 number 1, and that's the objection to 2.5.4 and
 20 2.5.7. Can you explain -- just explain why those
 21 changes were made?
 22 MR. ECKROTH: Yeah. Just a little
 23 background. 2. -- Section 2.5.4 is the soil volume
 24 methods narrative. It discusses the soil inventory
 25 calculations and then it also discusses how Section

35

1 2.5.7, which is the projected soil respread depth
2 map, is put together. Basically when I was going
3 through the revision, I was reviewing some of
4 that -- that section and noticed there's just
5 really some confusion, I think, by reading this
6 letter. All's I did was update it based on --
7 there was an error in the past on the projected
8 respread depths.

9 There were three -- there were three areas
10 where it was inadvertently labeled as projected
11 48-inch respread when it should have been 36-inch
12 respread based off of the overburden samples that
13 were taken premine. So I didn't change anything.
14 We didn't do any extra sampling or anything. It
15 was just a matter of catching an error that was
16 previously in the permit and correcting it. And
17 really that doesn't change anything. It doesn't
18 change the amount of SPGM that's going to be
19 respread. It's -- that map is for planning
20 purposes on potential respread needed for that area
21 based off of the overburden sample. So it's not
22 going to change the amount of SPGM that goes on.
23 It's just a map for planning purposes.

24 MR. MANN: I guess before we move on,
25 Jeremy, just so I'm clear, will the respread --

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1 that will be done in accordance with the PSC's
2 requirements and any performance standards;
3 correct?

4 MR. ECKROTH: Correct. Yes.

5 MR. MANN: You're not seeking any type of
6 relief from what the rules require?

7 MR. ECKROTH: Correct. We're not.

8 MR. MANN: Let's move on then to what the
9 Voigts have labeled as variances 1 through 7 and
10 address those objections. And with respect to the
11 objections to the reseeding time frames, can you
12 explain the mine's revegetation plan and
13 coordination with reclamation staff?

14 MR. ECKROTH: Yeah. I've been in contact
15 with the reclamation staff, with Guy Welch on some
16 of this stuff as well throughout the summer. As
17 part of this revision, as I was going through the
18 permit -- and, remember, I've been here for two
19 years now so I'm, you know, going through the
20 permit and learning the permit and seeing some --
21 some differences on it, and I noticed there were
22 basically two different areas that called out a
23 little bit different reclamation plans for how we
24 were going to do things.

25 I noticed one area stated that the

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1 approved final native grassland seed mix would be
2 seeded within six years. However, in Section
3 4.3.1, which was part of the renewal, revision 9 in
4 2019, it actually was updated. And I know Casey
5 and I have talked about this a little bit as well
6 that we were going to hold off until there's larger
7 blocks of native grassland tracts that we can seed
8 to the final approved native grassland seed mix.

9 So in order to make the permit say the
10 same thing and not have two different reclamation
11 plans out there, I updated the permit to reflect
12 the latest and greatest approved narrative that was
13 in the permit.

14 MR. MANN: Okay.

15 MR. ECKROTH: But I guess one other thing.
16 I guess I want to make clear, though, that even
17 with these changes that we're looking at doing --
18 and the reason we made those changes was to help
19 control invasive species coming in, Kentucky blue
20 grass, smooth brome, so it's strictly a management
21 -- it's not to, you know, just delay our
22 requirement to seed it. There's a management
23 reason for it.

24 But also I want to make clear that in
25 order to control wind and water erosion, all these

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1 reclaimed areas regardless of that variance, all
2 these areas are seeded to a cover crop whether it
3 be an annual or the temporary native grassland mix
4 once the topsoil is respread on them. So even
5 though we're asking for variances on this, that
6 area is still getting seeded. It's not being left
7 out there as bare -- bare ground, bare topsoil.

8 MR. MANN: Then let's move on to that, I
9 guess, kind of the last point, the variance 7. It
10 appears that there might be some misunderstanding
11 by the Voigts with respect to the location variance
12 7 and the associated reclamation. And if we can
13 pull up that map -- variance 7 map, that might be
14 helpful, but once we get that up, if you can
15 identify for us the variance 7 area and its
16 revegetation plan as opposed to the area that the
17 Voigts are referencing in the informal request.

18 MR. ECKROTH: Okay. What I did, I put a
19 map together here. It's in its -- it's at kind of
20 a lower angle to show the lay of the land a little
21 bit. Variance 7 on this map is shown in that
22 yellow hatch. The Voigt farmstead, their house, is
23 shown up there kind of in the center of Section 31.

24 MR. MANN: Can you use a pointer?

25 MR. ECKROTH: Oh, yeah.

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1 MR. MANN: That might help, too.

2 MR. ECKROTH: Does it show up on all of

3 them? Oh, it does. Okay. So this is -- this is

4 variance 7 that we're requesting, this yellow hatch

5 in here. The Voigt farmstead is located right up

6 here so it's about three-quarters of a mile to the

7 basically straight north. The farmstead is

8 three-quarters of a mile straight north from the

9 northernmost portion of this variance area. And,

10 you know, if you look further down, it's all the

11 way up to a little over a mile away from their --

12 their farmstead.

13 And I know -- I think there's some

14 confusion with the location based on the letter

15 requesting this hearing because I know the piles

16 that are being talked about and some of those shown

17 in that video, these are the three large stockpiles

18 that they discuss above their farmstead. So this

19 variance area does not include those stockpiles.

20 We're not looking for variance on the stockpiles.

21 This variance 7 that we're requesting

22 here, this is -- this is initial mining area down

23 here where we started mining. So the reason we're

24 asking for the variance on this is because when you

25 dig this hole where actually -- where the spoil was

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1 piled, it's above the approved post-mine topo, so

2 this material has to go somewhere. As we continue

3 to work our way to the southwest here, we'll have

4 more of a hole right here where we can get rid of

5 that material. So this is a cut area and we need a

6 fill area to put it. That's what we're looking at

7 having next year then. So we're not -- we're not

8 asking for an indefinite variance on this. We're

9 just asking for a one-year variance with the plan

10 to do the final regrade on that topsoil, subsoil

11 respread on that and seeding next year with it.

12 MR. MANN: And then -- and I don't know,

13 it might help just to keep this up. You saw the

14 photos -- some of those photos that had some water

15 backup --

16 MR. ECKROTH: Right.

17 MR. MANN: -- in a drainage ditch. Can

18 you kind of explain that, what that was --

19 MR. ECKROTH: You bet.

20 MR. MANN: -- and how that was handled?

21 MR. ECKROTH: So that -- that clean water

22 sump that was discussed, that was part of

23 Mr. Voigt's testimony here, that is located right

24 in this area here. And what we have is there's a

25 drainage to the southwest -- a large drainage that

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1 comes towards the pit. So we don't -- it's not

2 that we have a road built across there. It's the

3 bench that's built up, and as mining continues to

4 work its way to the southwest, this continues to

5 move. We strip this area and create a clean water

6 sump. The water running into that sump is clean

7 water. It's coming off of undisturbed land. It's

8 coming off of the native grassland to the south and

9 west and it accumulates in there. And then what we

10 do is we pump it around to this 63 pond.

11 So that's all approved in the permit. The

12 PSC has looked at that numerous times during their

13 inspections.

14 The one thing I want to clear up on the

15 record, though, Mr. Voigt said that he contacted

16 the mine, and I don't know what the dates were,

17 Casey.

18 MR. VOIGT: July 15th.

19 MR. ECKROTH: July 15th, but when you --

20 MR. VOIGT: July 15th.

21 MR. ECKROTH: Okay. When you contacted me

22 that day, I immediately called Donn -- Donn Steffen

23 here, he's our production manager, and asked him to

24 get a pump set up on that sump. We had received, I

25 think it was, around five inches of rain the week

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1 before so that sump backed up. So the water backed

2 up in there.

3 Right away when Casey called me, I

4 contacted Donn. We got a pump set up that night

5 and that was pumped down by the next morning. So I

6 believe it was a Saturday even that Donn came out

7 and made sure it was pumped down so --

8 MR. MANN: Your Honor, that's all that I

9 have on behalf of the mine at this time.

10 ALJ HOGAN: All right. Mr. Braaten, do

11 you have any questions?

12 MR. BRAATEN: Yeah. And to be fair,

13 I'll -- and to be fair, I'll leave it up to

14 Mr. Mann whether he wants to answer or the witness.

15 There's an indication that you're not

16 asking for a permanent variance, but the mine

17 permit revision literally removes all time limits

18 from all seven variances. And so, I guess, if

19 something has changed, we'd like to know what that

20 is because, based on the revisions, there is no

21 time limit. And we are fully aware of where

22 variance 7 is. Variance 2 is right up above the

23 Voigt household and they are requesting to remove

24 time limits from all seven variances, not just

25 variance number 7.

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1 The indication that the water is clean we
2 agree with, but once it goes down into a disturbed
3 area full of disturbed soil and open soil with no
4 vegetation on it, that's not clean, and that backs
5 up and you get more dissolved solids in that water
6 while it's sitting there, and we didn't hear
7 anything about any testing being done there. We're
8 aware where the water was pumped to or when it was
9 discharged from the pond and what the levels were
10 in the pond, and so we still have those concerns
11 and questions about it.

12 And then in terms of the respread depths,
13 we certainly do need more information and a better
14 understanding of how it's being done, but it's not
15 just a question of whether PSC rules are being
16 followed because the rules have certain respread
17 requirements, but the coal lease has certain
18 respread requirements, too, and it requires the
19 same amount to come back as was taken off and only
20 allows a certain type of mixing of soils. And we
21 haven't gotten into that, but we also have concerns
22 about the Voigt soil being mixed and specifically
23 also mixing of soil types and whether those are
24 being preserved.

25 So I'll leave it at that. I also have

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1 some specific questions. For example, if you're
2 seeding cover crops and annuals, what's the seeding
3 rate, what kind of yields are you getting, is that
4 sparse or is it dense enough to actually hold down
5 the soil. So those are some of the questions that
6 we would have.

7 MR. MANN: I think Mr. Eckroth can and is
8 willing to address some of those. There was a
9 number of them. I mean --

10 MR. BRAATEN: Do you want me to just
11 question him?

12 MR. MANN: No. I mean --

13 MR. ECKROTH: I'll go ahead.

14 MR. MANN: Why don't you go ahead.

15 MR. ECKROTH: I'll go through -- the first
16 thing, I guess, I'll cover is this -- this -- this
17 sump that we discussed here. So like I said -- and
18 I did actually mention it when I was discussing
19 this. When this filled up, we pump -- we have poly
20 set up to pump it around to 63. So we don't -- we
21 don't do any testing on that because it goes into
22 the pond. So then we test the pond when we
23 discharge the pond. So it is tested before it's
24 discharged off the minesite.

25 And then as far as the -- what else did

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1 you have? Go ahead.

2 MRS. VOIGT: With that and other things
3 that have happened, I guess I'm asking, why does it
4 take us to notice this, that water is backed up on
5 our land, to have to bother you guys and contact
6 you guys to do something about it? Why wasn't --
7 why aren't those things dealt with without us
8 having to say that they're a problem for us? How
9 come you guys don't realize that that would be a
10 problem that it's backed up and do something?

11 MR. ECKROTH: Yeah. We -- I mean, we --
12 Casey -- I've talked to Casey a lot as well on
13 this. You know, we had five -- I think it was five
14 inches of rain. Don't quote me on it. It was a
15 significant amount of rain that week before, four
16 to five inches, whatever it was, but it's something
17 we didn't notice. And when Casey contacted me, I
18 took care of it right away, and I guess we
19 generally catch that. This time we did not.

20 MRS. VOIGT: This was --

21 MR. ECKROTH: And we got it pumped down.
22 We're in the process of -- you know, when you have
23 that much rain on the minesite, you're paneling the
24 water and --

25 MRS. VOIGT: This was the same valley --

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1 Guy Welch was with, I believe, on that tour.
2 Jessica.

3 MR. VOIGT: Preston.

4 MRS. VOIGT: Okay. But we were -- we
5 viewed that same valley how many years prior to
6 that with similar trouble where the water had
7 backed up and the catch areas, the low spots were
8 filled because of it, and they stood and said that,
9 no, you're wrong, that that's just from the runoff,
10 and it isn't. And then this obviously was again.

11 I'm just, I guess, kind of curious why we
12 have to bring it to your guys' attention when you
13 guys are right there, obviously right beside it,
14 it's happening, these types of things. You know,
15 that's just to --

16 MR. ECKROTH: Right. We try to catch
17 everything. I guess there's -- you know, there's a
18 few alternatives to this and we're trying to have
19 the best option for you guys to maximize your
20 grazing because the alternative would be to strip
21 the drainage further up and not have any vegetation
22 in there, and I know you guys wouldn't be happy
23 with that, or to construct a pond upstream to catch
24 it, which would also take out grazing lands as
25 well. So we're trying to -- we're trying to

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1 provide the best available option for you guys to
 2 allow to maximize your grazing ahead of mining.
 3 MRS. VOIGT: Unfortunately, I feel like
 4 there's been many times with that if we do mention
 5 something such as this, it does get addressed, but
 6 then there's repercussion that we have to pay
 7 because of it, that you'll take out more land or
 8 you'll fence us out of more or you'll take out
 9 where our water tanks have been for our cattle, to
 10 fence us out of something because we've made known
 11 to something such as this. I think that's all --
 12 MR. ECKROTH: I guess I've never -- we
 13 don't operate like that. I would hope that you
 14 haven't felt that way that that's the way -- we're
 15 not operating that way. So I've tried to have real
 16 open communications with you guys to make sure
 17 that, you know, we're trying to limit any impacts
 18 on you.
 19 MR. BRAATEN: You had indicated that
 20 you're going to seed the reclaimed areas within the
 21 variances to a cover crop or a temporary native
 22 grassland mix. I guess to start with, can you just
 23 tell us a little more about that and specifically,
 24 if you're doing annuals, what kind of annuals and
 25 what kind of seeding rates?

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1 MR. ECKROTH: It would -- it would depend
 2 on the timing, I guess, of when the topsoil is
 3 respread. We have -- I'd have to -- it's in the
 4 permit. I don't know off the top of my head what
 5 the seeding rate is on the temporary. But if we're
 6 going to an annual crop -- if we're going to put an
 7 annual crop on there, it would be an oats most
 8 likely that we would put on there, and that's
 9 strictly to control erosion until we can get the
 10 more perennial seed mix established. We also have
 11 a -- we have a temporary native mix, which Casey
 12 and I have discussed -- maybe not exactly what's in
 13 the mix, but we've discussed that. And the idea
 14 behind putting that temporary mix in is like I had
 15 addressed, was to try to control the weeds, try
 16 to -- the thought was that there may be some brome
 17 invasion and Kentucky blue grass, and if we have
 18 that temporary native seed mix in until we have the
 19 larger blocks of land available to seed to that
 20 final native mix, that we can have a better end
 21 product when it comes time for the final native
 22 mix. But as far as the rate on --
 23 UNIDENTIFIED SPEAKER: Is it this one
 24 here?
 25 MR. ECKROTH: Yeah. So it would be 19

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1 pounds -- 19 and a half pounds per acre on the --
 2 on that temporary native mix. For species
 3 consisting of slender wheatgrass, western
 4 wheatgrass, sand dropseed and switchgrass.
 5 Did you catch that?
 6 MR. BRAATEN: Yeah.
 7 MR. ECKROTH: 19 and a half pounds per
 8 acre is what we're putting down. Four different
 9 species, slender wheatgrass, western wheatgrass,
 10 sand dropseed and switchgrass.
 11 MR. BRAATEN: Okay. And how about for the
 12 annuals, like oats?
 13 MR. ECKROTH: The annuals, Donn, do you
 14 know off the top of your head what we're --
 15 MR. STEFFEN: Depends on the timing.
 16 MR. ECKROTH: Right.
 17 MR. STEFFEN: Sometimes we put 30 pounds
 18 up to 50 pounds per acre.
 19 MR. ECKROTH: Sufficient to -- sufficient
 20 to control erosion.
 21 MR. BRAATEN: Are they being planted at
 22 seeding rates that are recommended for farmers
 23 actually growing those crops?
 24 MR. ECKROTH: I don't know what the
 25 recommended rates would be, I guess. I'd have to

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1 take a look at that. I can't answer that.
 2 MR. BRAATEN: Just stop me whenever you
 3 want. I'm not trying to get formal here. So I
 4 really just don't understand. Are there separate
 5 seeding rates used by NRCS or the PSC that are
 6 specific to erosion control versus growing a crop?
 7 MR. ECKROTH: That I'm not aware of. I
 8 can't answer that.
 9 MR. BRAATEN: Okay.
 10 MR. ECKROTH: All these areas, though,
 11 when they're seeded, they're also mulched as well
 12 to help control erosion. So we're mulching these
 13 areas as well so that there's that time frame
 14 between when the crop actually comes up so that
 15 there's actually cover on the ground as well. It's
 16 mulched and crimped in.
 17 MR. BRAATEN: And then do you know what
 18 kind of mulch or where it comes from?
 19 MR. VOIGT: I know where it used to come
 20 from. I don't know where the new stuff comes from.
 21 With the PSC's inspection reports they have
 22 numerous noted that this frills --
 23 MR. BRAATEN: Yeah.
 24 MR. VOIGT: -- which is erosion, so
 25 there's signs of erosion in that area.

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1 MR. BRAATEN: The other thing, you know,
2 Mr. Eckroth, you had said that you guys aren't
3 asking for a permanent variance.
4 MR. ECKROTH: Correct.
5 MR. BRAATEN: And, Wade, if you want to
6 jump in on this one, I understand. It's kind of a
7 legal question. But my understanding of the
8 revision is that all the revision did is delete the
9 six-year limit on variances 1 through 6 such that
10 variances 1 through 7 now have no time limit. Do
11 you guys disagree with that?
12 MR. ECKROTH: They don't have a time limit
13 on the final native seed mix that would go in on
14 there, but that doesn't -- that doesn't give them
15 an indefinite from vegetation. So there's a
16 temporary native mix that would go in. That's kind
17 of the idea behind it was to allow for larger
18 blocks. So it's still getting seeded to the
19 temporary native mix, but that final native mix may
20 not go in there. And in order to make the permit
21 jibe with the other areas, that's why that six-year
22 was taken off.
23 MR. BRAATEN: Okay. If you're -- I think
24 this is my last one. But can you -- I'll try and
25 ask it open-ended, too. You have a temporary seed

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1 mix and I think you had mentioned that for
2 management reasons you want to do that versus doing
3 the permanent native seed mix. Can you explain
4 just a little bit about why for management reasons
5 you're using the temporary now versus going
6 straight to the permanent?
7 MR. ECKROTH: The idea behind it was
8 because it's probably going to have to get burned
9 off, Roundup and start over once we have a larger
10 block. So that was some of the thinking behind it.
11 We've also discussed just going straight into the
12 native mix. Now, knowing so if we do that, we may
13 -- if it is invaded with brome and Kentucky,
14 because you have these smaller irregular tracts --
15 you know, the best management would be grazing for
16 these. So if we go to that final native mix on
17 these smaller tracts and they're invaded with brome
18 and Kentucky, then we'd end up going in and
19 Rounduping them.
20 Now, Guy was out on the inspection -- was
21 it just you, Guy? I think it was just you that
22 came out -- I can't remember -- that looked over
23 some of these temporary areas and we were finding
24 that, you know, the brome and Kentucky weren't the
25 issues that we thought they were going to be, so we

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1 went out, we sprayed off the brome in those tracts
2 and we've been discussing on whether do we just go
3 straight to the final native mix on them. And if
4 it does show that they are being invaded, then do
5 we just burn off with Roundup. So we've been
6 discussing that. It's definitely something we're
7 open to, just doing that.
8 And it's hard to say -- you know, those
9 tracts looked really good. We've had two years of
10 a drought leading up to this here so that could be
11 part of the reason possibly that, you know, we're
12 not seeing the brome or Kentucky as much. You
13 know, we're --
14 MR. BRAATEN: I don't think I have any
15 other questions. Thank you. I appreciate it.
16 MRS. VOIGT: Are there things that you're
17 doing as far as the composite of the soil, you
18 know, the organisms and the makeup of the actual
19 topsoil to ensure that it gets back to the original
20 native state as far as the soil itself?
21 MR. BRAATEN: I'm just going to tack
22 something onto Julie's question I was going to ask.
23 But with the temporary mix, are there any forbs or
24 legumes or anything like that that's getting mixed
25 in?

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1 MR. ECKROTH: No forbs. So the temporary
2 mix was the four native grasses, the slender,
3 western, sand dropseed and switchgrass. No forbs
4 at that time. The final native mix has the forbs
5 in it.
6 MR. BRAATEN: And then kind of back to
7 Julie's question, you know, are you doing anything
8 with the soil, whether it's additives or working it
9 or not working it, specifically anything like that
10 to try and build up soil health in the meantime?
11 MR. ECKROTH: As far as working it, it
12 would be disked and chiseled when it's put down.
13 We're not doing any sampling for organisms, I'm not
14 familiar with. We're just not doing that if
15 it's --
16 MR. BRAATEN: But like cutting and leaving
17 residue on the field, for example?
18 MR. ECKROTH: There's mowing. Well, there
19 would be mowing. You know, there's times where we
20 go in and mow the -- you know, mow it down as well.
21 And then like this year we hayed some of those
22 areas and provided those bales for the Voigts.
23 MR. BRAATEN: Okay.
24 ALJ HOGAN: That's it?
25 MR. BRAATEN: Yeah.

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1 ALJ HOGAN: All right. Mr. Schuh, any
2 comments, questions?

3 MR. SCHUH: I do. And, Matt, could you
4 pull up PSC documents?

5 MR. KLUZAK: Sure.

6 MR. SCHUH: Document number 12. And
7 you'll be familiar with this. This is just Section
8 3.1.1.3. That's it. Could I have you scroll to
9 the second page. I think just for our --

10 UNIDENTIFIED SPEAKER: Can you read that?

11 MR. MANN: I know what it said. I mean,
12 I'm pretty familiar with this one. Yep.

13 MR. SCHUH: Gotcha. So I guess up here,
14 this demonstrates the variance area number 7 with
15 the revegetation in 2023. But can I -- can you
16 scroll down just a little bit more, Matt.

17 MR. KLUZAK: Yep.

18 MR. SCHUH: So in our footnote number 3,
19 it says, your revegetation for native grasslands
20 and associated land uses such as woodlands will
21 extend to six years from the year of coal removal
22 to allow for processes to introduce species, and so
23 forth. Is that consistent with the other areas?

24 MR. ECKROTH: No, that's not. That's
25 something I noticed when we got technicals back

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1 from the PSC was that it was left in there, too.
2 And that's a problem with these permits, it's a
3 large document and sometimes it gets missed in
4 certain areas, and I think that's maybe what
5 happened in revision 19, but I was planning on
6 making that correction as well depending on how
7 things went.

8 MR. SCHUH: Okay. So that was supposed to
9 be --

10 MR. ECKROTH: That will be updated --

11 MR. SCHUH: -- (simultaneous speaking)
12 process?

13 MR. ECKROTH: Exactly. That will be
14 updated with the rest of it, yeah.

15 MR. SCHUH: That's good education then.
16 That is part of that full removal?

17 MR. ECKROTH: Right. Yeah. Correct.

18 MR. SCHUH: That's for our own knowledge
19 as well. And you -- I know we discussed, I guess,
20 the -- and the Commission approved the larger tract
21 revegetation, you know, larger than 80 acres. And
22 I guess the first question I have for that is, I
23 know operationally there's a benefit, but what is
24 the reclamation benefit for that?

25 MR. ECKROTH: The reclamation -- I don't

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1 even know if operationally if the benefits -- the
2 benefit, it would be on the post-mine, the final
3 product more so than the operations side of things.
4 And like I said earlier, the benefit is trying to
5 control those invasives. There's a big issue in
6 North Dakota and everywhere really with the
7 invasion of Kentucky blue grass and smooth brome on
8 native prairies.

9 MR. SCHUH: Mm-hmm.

10 MR. ECKROTH: And that's really why we're
11 doing that. That's why that's been put in there to
12 have the larger blocks that you can -- the idea
13 behind it is so that you can go to grazing, because
14 grazing is the best management on there. Going in
15 and mowing is not the best management for native
16 grassland.

17 MR. SCHUH: Sure.

18 MR. ECKROTH: Actually getting cattle back
19 in there and grazing it would be, so that's why
20 that's put in there for the 80 acres. It's not to
21 benefit us on the operations side. It's the final
22 product to -- you know, ultimately for the Voigts
23 is why we're doing it.

24 MR. SCHUH: Gotcha. I think when I was
25 looking through the -- of course, the different

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1 tracts, 80 acres is sizable -- a sizable tract.
2 When would you think that we'd actually be -- you
3 would be in a position to do revegetation of 80
4 acres?

5 MR. ECKROTH: We've got some areas right
6 now. And even if -- if there's an area that it
7 might be less than 80 acres, if that's kind of the
8 extent of what it's going to be, and I can't speak
9 exactly the acreage on one of the tracts that we're
10 thinking of, but if it's ready to go -- and, Casey,
11 that's the one that we discussed where you had
12 asked about possibly putting sheep on there or
13 whatever, you know -- we'll go -- we'll seed that
14 to native and go forward with it.

15 And we had some of those discussions and
16 they've dropped off, you know, this year, but
17 whatever -- if Casey is comfortable with a 60-acre
18 block and he's ready to put some cattle on there
19 and we'll get water into that, we'll fence it off
20 and we'll start grazing it, but it's got to be
21 logical for the Voigts to bring cattle in and graze
22 something. I don't think they want to come in and
23 graze a 15-acre tract. So we're open and that's
24 part of the conversations that I've been, you know,
25 wanting to have with the Voigts to work towards

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1 that, to come up with a plan, whether it would be
 2 for -- and Casey and I have talked about this with
 3 Tyler as well for the -- where the water lines are
 4 going to go, where the stock tanks are going to go
 5 so we can start coming up with some grazing plans.
 6 That's where we want to get so we can move towards
 7 that final reclamation and get these areas seeded
 8 and get them back on there with cattle and so we
 9 don't have to cut it for hay and just do the haying
 10 of this land.
 11 MR. SCHUH: Okay. I think that's all I
 12 have.
 13 ALJ HOGAN: All right. Anything further,
 14 Mr. Mann?
 15 MR. MANN: No, Your Honor.
 16 ALJ HOGAN: All right. Do we want to take
 17 a short break or --
 18 UNIDENTIFIED SPEAKER: Sure.
 19 ALJ HOGAN: Let's shoot for eleven
 20 o'clock. That would be 14 minutes.
 21 (Recess taken.)
 22 ALJ HOGAN: Ready to go? All right.
 23 Mr. Schuh.
 24 MR. SCHUH: Sure. Thank you, Your Honor.
 25 We did bring a couple people to make them available

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1 to address some of the Braaten's and the Voigts'
 2 concerns. I guess just for the -- kind of setting
 3 the stage of this, though, as part of this process
 4 that they request for revision, I mean, staff is
 5 continually doing its review. They'll send out the
 6 deficiencies, there will be corrections,
 7 subsequently there will be more. So even after
 8 this informal conference, it's not that everything
 9 has been addressed. This is here again to address
 10 the Voigts' concerns specifically. I anticipate
 11 that we'll still be sending out deficiencies of
 12 different things to be addressed and that's again
 13 part of the process up to final approval.
 14 So some of those items as it relates to
 15 the Voigts' concerns, I think Mr. Welch will
 16 probably bring up to a degree and will address, for
 17 example, the footnote number 6 that Mr. Eckroth
 18 spoke about. But I think we'll start off with
 19 Monty, Monty Johnson, and he'll talk about the
 20 respread and hopefully be able to answer some of
 21 the questions for the Voigts regarding our process
 22 and what we have been looking at.
 23 So in anticipation of this informal
 24 conference, Monty was good enough to provide a memo
 25 which was available to you for review and, I guess,

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1 that does provide a little bit of perspective, but
 2 for the purpose of moving this forward, I asked
 3 that he be prepared just to kind of discuss a
 4 number of these items and also discuss the content
 5 within this memorandum.
 6 MR. JOHNSON: Yeah. So it sounds like you
 7 guys had questions on interpreting memorandum 17,
 8 which I don't blame you. It is very confusing if
 9 you're not used to it.
 10 Anyway, I know Jeremy kind of touched on
 11 this that what they changed were the projected
 12 respread thicknesses, and what's that used for is
 13 essentially, you know, planning purposes. So
 14 before we even issue a mining permit, the mine has
 15 to submit, you know, reports on environmental
 16 conditions, environmental resources before any
 17 mining happens. And one of the ones --
 18 environmental resources is a professional soil
 19 survey. So essentially we have to ask the question
 20 how much soil is on this land before mining so we
 21 -- and then kind of another important question is
 22 how much of the soil do we anticipate needing to
 23 reclaim the land per our rules and regulations. So
 24 that's where these projections come into play.
 25 And how that's done is kind of on top of

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1 this, the mine is required to drill a hole every 40
 2 acres before -- this is all -- kind of comes into
 3 play of the initial permit application to
 4 understand the geology and also the soil properties
 5 of the overburden.
 6 So every 40 acres a hole is drilled all
 7 the way through the coal seam that they plan on
 8 mining, and they're required to sample the
 9 overburden every five feet. And what that's used
 10 for is to project the SPGM respread depths based
 11 off of the spoil properties and that's kind of
 12 where memorandum 17 comes into play.
 13 So I guess the first thing I'd really like
 14 to point out is page 2, the second paragraph. So
 15 it says, Since the total SPGM respread thicknesses
 16 are tied to the graded spoil properties, the amount
 17 of SPGM to be removed prior to mining will be based
 18 on the premined overburden sample analyses. So
 19 that's the one hole every 40 acres.
 20 So -- and then this is also a very good
 21 statement, that this process isn't -- you know,
 22 there's flaws to it. There's really no accurate
 23 way you can project the actual respread thicknesses
 24 with the overburden samples. It's kind of just,
 25 you know, our best guess based off of the practices

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1 that we -- that are available to us right now. So
 2 it says, yeah, there's no model for accurately
 3 predicting post-mining graded spoil properties from
 4 the premined overburden data. So this is what we
 5 have at our disposal.

6 So like I said, it just kind of gives us a
 7 best educated guess as to how much soil the mine
 8 should be salvaging to successfully reclaim the
 9 land. And what their -- what they changed -- or
 10 what they're proposing to change in revision 12 is
 11 just the projections and not the actual respread
 12 thickness.

13 Yeah, please feel free to ask questions.

14 MR. BRAATEN: Are you saying that the --
 15 is the respread --

16 ALJ HOGAN: Can you turn your microphone
 17 on.

18 MR. BRAATEN: Is the respread thickness
 19 based on those projections, though?

20 MR. JOHNSON: It is not. So it's kind of
 21 the same approach as far as like what soil
 22 properties you're looking at. So when it comes
 23 time to actually determine the thickness of SPGM,
 24 the mine is taking the spoils that essentially, you
 25 know, the dragline is digging their pit and then

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1 they're dumping those spoils into an adjacent pit
 2 that's already been mined so they're filling that
 3 in.

4 And then through all their processes, you
 5 know, they're grading that spoil to what the final
 6 topo will be. And then once that's done, samples
 7 have to be taken on the graded spoil surface, and
 8 depending on those chemical and physical properties
 9 -- there's really two we're looking at and that's
 10 sodium absorption ratio and then soil texture. So
 11 depending on the results of those samples, that
 12 shows what thickness of SPGM they have to respread.

13 So there are plenty of -- plenty of times
 14 where a certain area will have a 48-inch respread
 15 projection, but when it comes time for actual
 16 respread, it could be less than that. And then
 17 there's times where, say, there's a 24-inch
 18 respread projection, it would actually be -- more
 19 than that would be required so it's kind of a --

20 MR. BRAATEN: And --

21 MR. JOHNSON: So I do have examples of how
 22 I review projected respread thicknesses if you
 23 think that would be helpful.

24 MR. BRAATEN: And my -- the other maybe
 25 very basic question I have is --

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1 MR. JOHNSON: Mm-hmm.

2 MR. BRAATEN: -- in memo 17 they set out
 3 the different ways to -- they set out two options
 4 for handling SPGM.

5 MR. JOHNSON: Yeah.

6 MR. BRAATEN: Which one is being used
 7 here?

8 MR. JOHNSON: Yep. Option 2.

9 MR. BRAATEN: Okay.

10 MR. JOHNSON: And I believe in my
 11 experience, that's pretty much all the coal mines
 12 in this state. Option 1 is mostly with the smaller
 13 like leonardite mines. And the reason they do
 14 option 2 is we also have a requirement that mines
 15 have to essentially have enough cover over
 16 toxic-forming materials and then that's kind of
 17 another policy memo. Yes. Correct.

18 So the specific method they use -- so as
 19 you can see, option 2, there's A, B and C. They're
 20 using option 2C. And that's because in certain
 21 areas where the coal is greater than 85 feet -- the
 22 overburden is greater than 85 feet above the coal
 23 seam they're mining, they take that material that's
 24 greater than 85 feet above the coal and they remove
 25 that with their prebench fleet. And this material

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1 is usually your better quality overburden. It's
 2 the glacial till, typically has a lower sodium
 3 absorption ratio, and they're selectively handling
 4 that material so once the dragline does it's thing
 5 and removes the overburden and its spoils into the
 6 pit and then they grade that out, they come in with
 7 this material they take with the prebench fleet and
 8 then place it on top of the spoils that the
 9 dragline spoiled.

10 So they're essentially selectively
 11 handling the better-quality stuff because they want
 12 that on top versus, you know, the -- and this
 13 process is all laid out in the permit, Section
 14 2.5.4. And it's kind of just included in the
 15 narrative there. If you wanted to pull that up,
 16 you know, I kind of gave a generalization on that
 17 but --

18 MR. BRAATEN: Go ahead. John, do you mind
 19 if Casey asks this one question?

20 MR. VOIGT: So if you're saying they
 21 prebench the hills, are you saying that those hills
 22 have better soils than the valleys?

23 MR. JOHNSON: No. I'm talking like this
 24 is --

25 MR. BRAATEN: You're talking about it's

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1 like a -- it's not SP -- it's not super --
 2 MR. JOHNSON: It's -- correct. It's not
 3 the topsoil. It's the overburden material. It's
 4 not your topsoil or subsoil. This is after all
 5 that gets removed.
 6 MR. VOIGT: But anything over 85 feet
 7 would be the hills?
 8 MR. BRAATEN: Oh, I see what you're
 9 saying. So --
 10 MR. JOHNSON: I don't know if I follow.
 11 MR. BRAATEN: Yeah. So you were saying
 12 that you take anything greater than 85 feet above
 13 the coal seam.
 14 MR. JOHNSON: Correct.
 15 MR. BRAATEN: And I think what Casey is
 16 saying is that would generally mean that a lot of
 17 what you're taking there would be any hills that
 18 have -- you know, because the hills obviously are
 19 going to be most of what's above that. And I
 20 don't -- I mean --
 21 MR. JOHNSON: Sure.
 22 MR. BRAATEN: So they spread that
 23 overburden on the very top?
 24 MR. JOHNSON: Correct. Yeah. Yeah.
 25 MR. VOIGT: I would disagree.

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1 MR. JOHNSON: Okay. So --
 2 MR. BRAATEN: As to whether they take the
 3 hills?
 4 MR. VOIGT: That that would be better.
 5 MR. BRAATEN: Okay.
 6 MR. JOHNSON: The projected soil respread
 7 depth map, Section 2.5.7, there's a thin red line
 8 on that that shows where this process is being
 9 conducted because it's not actually the entire coal
 10 mine where they do this. It's only where that
 11 overburden is 85 feet above coal.
 12 MR. BRAATEN: Is that anywhere that
 13 shows --
 14 MR. JOHNSON: So the red line, and it's
 15 actually -- I guess when I printed it out, you
 16 don't see it, but there's like little black
 17 hatching, there are dots.
 18 MR. BRAATEN: Yeah.
 19 MR. JOHNSON: And it's my understanding
 20 that's the area, and this is determined off of all
 21 those drill holes before mining is conducted. It's
 22 those areas that there's more than 85 feet above
 23 the target coal seam.
 24 MR. BRAATEN: Okay.
 25 MR. JOHNSON: So those areas outside of

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1 that, they are using item 2 -- 2A on policy memo
 2 17.
 3 MR. VOIGT: I guess I would just say from
 4 looking at the map that it appears to me it is the
 5 higher elevations where they are saving the
 6 overburden.
 7 MR. JOHNSON: Sure. Okay. So then, I
 8 guess, I'll let you -- if you have any questions.
 9 MR. SCHUH: Actually I kind of prefer to
 10 just allow you to move on.
 11 MR. JOHNSON: Okay.
 12 MR. MANN: That's fine we just come back
 13 and ask these.
 14 MR. BRAATEN: Yeah, yeah. Go ahead.
 15 MR. JOHNSON: So I guess when it comes to
 16 revision 12, Coyote is proposing to change the
 17 projected respread depth of three distinct
 18 locations in the west half of Section 25. Do you
 19 have that on the map? Do you have the projected?
 20 So it's that point there, 120-20 and then the one
 21 just below it, yep, 120-18 and then the 120-15.
 22 UNIDENTIFIED SPEAKER: Do you want me to
 23 point it out here?
 24 MR. JOHNSON: Yes, please.
 25 UNIDENTIFIED SPEAKER: It would be these

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1 two here and this one right here?
 2 MR. JOHNSON: Yeah. Correct. So I guess
 3 as part of my process when I'm reviewing these
 4 permit revisions is then I also check to see if
 5 that's within, you know, our regulations, like are
 6 they justifiable reducing it to 36 inches. So I
 7 look at those actual spoil samples. And I have
 8 that as an exhibit. So this is where it gets
 9 technical, and I don't blame you for being
 10 confused.
 11 MR. BRAATEN: No. This is (indiscernible)
 12 --
 13 MR. JOHNSON: Okay. Where to start. So,
 14 first of all, I guess the best description on the
 15 process how we determine the projected is actually
 16 kind of narrated in item 2A, even though in this
 17 case that's not the exact process they're using,
 18 but basically we determine the projected respread
 19 by -- so the respread thickness of the area
 20 represented by each drill hole will be specified
 21 based on the most undesirable material, so, in
 22 other words, that material requiring the greatest
 23 thickness of replaced SPGM occurring in 20 percent
 24 or more of the overburden above the coal seam.
 25 So we're taking that 20 percent of the

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1 most undesirable material to determine the
 2 projected SPGM thickness. But because in these
 3 spots Coyote is using the truck shovel operation,
 4 so we essentially take that same method, but we're
 5 only applying it to what they're removing with the
 6 truck shovel fleet.

7 So as you can see here, this is just an
 8 example of what I do when I review this stuff. So
 9 if you zoom out a little bit. Okay. So the
 10 geology section of the permit they have all their
 11 drilling logs, so I look at that for this specific
 12 drill hole and then I identified the top of coal.
 13 The coal that they plan on mining is 121.25 feet
 14 below ground surface. So I marked that there.

15 And from there the process, which is laid
 16 out in the permit, they're telling us that they're
 17 removing everything that's 85 feet above that with
 18 the truck shovel fleet. So if you take 121.25,
 19 subtract 85 feet from that, it's 36.25 feet. So
 20 that's what they're removing with the truck shovel
 21 fleet to selectively handle and spread on top of
 22 the adjacent graded spoils.

23 So as you can see, we're only -- they
 24 sample every five feet so that 36.25 feet is in
 25 that 35- to 40-foot sample range. So that's kind

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1 of why I drew that line below the 40 foot. And
 2 then --

3 MR. BRAATEN: Can I ask just one quick
 4 clarification?

5 MR. JOHNSON: Mm-hmm.

6 MR. BRAATEN: Is the truck shovel fleet
 7 removing everything below that 36 feet or above it?

8 MR. JOHNSON: Above it.

9 MR. BRAATEN: Okay.

10 MR. JOHNSON: Minus the SPGM.

11 MR. BRAATEN: Okay.

12 MR. VOIGT: No, they remove that.

13 MR. JOHNSON: Well, yeah, scrapers do,
 14 but, yeah, correct.

15 MR. BRAATEN: Okay. Thank you.

16 MR. JOHNSON: Yep. Yep. So then just
 17 kind of what I do is I take, you know, 40 feet, so
 18 that's what the truck shovel fleet is taking, zero
 19 to 40 feet. I divide it by five because these are
 20 five-foot increments, and that tells me that
 21 they're required to have eight sample intervals
 22 that we analyze above dragline removal depth. So
 23 as you can see, I have those sample intervals
 24 numbered out 1 through 8.

25 So then policy memo 17 tells us that we're

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1 looking at the -- at 20 percent -- that make up 20
 2 percent of the worst soil. So when you do eight
 3 intervals times 20 percent, that comes out to 1.6
 4 intervals. So, well, you can't really have half an
 5 interval, so we're looking at two intervals of the
 6 least desirable material and that's going to decide
 7 the projected respread depth.

8 So as you can see and what policy memo 17
 9 as well as the administrative code tells us, we're
 10 only looking at sodium absorption ratio and
 11 texture.

12 MR. BRAATEN: Is the texture something
 13 that's determined by the driller while they're
 14 drilling?

15 MR. JOHNSON: No. It's lab analyzed using
 16 like a hydrometer or certain geotechnical sampling
 17 procedures.

18 MR. BRAATEN: Okay.

19 MR. JOHNSON: So, I guess, now let's refer
 20 to NDAC 69-05.2-15-04, and it will be item 4. So
 21 keep going down. You'll see a table. There you
 22 go. Bingo. Okay. So this is kind of how we
 23 determine required SPGM thicknesses. They
 24 essentially have three options: 24-inch respread,
 25 36-inch respread or 48-inch respread. And then

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1 that depends on the results of the texture of the
 2 soil and the sodium absorption ratio.

3 So as you can see, if any sample has a
 4 sodium absorption ratio of greater than 20, then
 5 it's 48 inches no matter what. And then you have,
 6 you know, SARs between 12 and 20, would be a
 7 36-inch respread.

8 MR. MANN: SAR is sodium absorption ratio?

9 MR. JOHNSON: Yes. Correct. Yep. Unless
 10 you have a coarse texture soil, like a sand, you
 11 know, a sandy soil, then -- then we require at
 12 least a 36-inch respread.

13 So, anyway, these are what we use in the
 14 projections. So I guess if you go back now to the
 15 spoil sample calculations, that tab. Yeah, okay.

16 So as you can see, we're analyzing the first eight
 17 samples for SAR and texture.

18 So right now I'm seeking out what's the
 19 worst sample. Well, it's that SAR, that sample
 20 interval 8 that's above 20. But now I see that's
 21 the only one that's above 20. And what I've
 22 determined is we need at least two sample intervals
 23 that would -- that would show us a 48-inch
 24 respread, but we're only getting one. Everything
 25 else above that has an SAR between -- minus the

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1 first 10 feet has an SAR between 12 and 20, so that
 2 would tell me that it's -- they're justifiable in
 3 projecting a 36-inch respread. And then, of
 4 course, the texture is clay loam and clay, which is
 5 a medium to light texture, so it's not -- it's not
 6 the coarse texture that the sandy loam, loamy sand
 7 or sand.

8 MR. BRAATEN: Does the texture get used in
 9 the calculation at any point?

10 MR. JOHNSON: Yes.

11 MR. BRAATEN: Okay.

12 MR. JOHNSON: Yes. I wonder if I do have
 13 one. Not these specific ones. So, say, like
 14 hypothetically, because I don't have an example in
 15 front of me, like there was some of them that had
 16 textures that were like sand, then I would use
 17 those to factor in like, okay, then that needs a
 18 36-inch, if that makes sense. I don't know if
 19 that's what you were asking.

20 MR. BRAATEN: So if you have a coarse
 21 texture, you're going to treat it similar to how
 22 you would treat an SAR above 20?

23 MR. JOHNSON: Yes, except -- except --
 24 well, it would be how I would treat an SAR between
 25 12 and 20.

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1 MR. BRAATEN: Okay.

2 MR. JOHNSON: And that's based off of the
 3 administrative code, that table.

4 So if you go back to the table --

5 MR. BRAATEN: I gotcha. I gotcha.

6 MR. JOHNSON: Yeah. -- you see how coarse
 7 texture and then the two asterisks next to it, that
 8 points us at a sandy loam or coarser. Well, even
 9 though you have -- if you had a favorable SAR like
 10 it's showing there in the table, like a 12 or
 11 anything below a 12, which would normally allow for
 12 a 24-inch respread, but because it's a coarse
 13 texture, then it would be a -- then it has to be a
 14 36-inch respread.

15 MR. BRAATEN: Gotcha.

16 MR. JOHNSON: So, you know, just keep in
 17 mind these are -- these are all projections just to
 18 kind of, you know, make sure that they're salvaging
 19 enough SPGM to respread in the future. When it
 20 comes time to actually respread the SPGM, they're
 21 taking the graded spoils and then they're just
 22 taking samples from the -- from a 12-inch depth,
 23 and then whatever those samples show, then that's
 24 what we respread it to. So we're essentially using
 25 the same table for the spoil sampling -- the graded

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1 spoil sampling when it comes time to actually
 2 respread the soil, if that makes sense.

3 MR. BRAATEN: It does.

4 MR. JOHNSON: And that's kind of, you
 5 know, talked about in policy memo 17 as well.

6 MR. SCHUH: And I think that covers most
 7 of the items that you provide in your memorandum;
 8 right?

9 MR. JOHNSON: Yeah. I think actually
 10 there was a question -- if I can find that -- on --
 11 let's see here. Yeah, item 2 of the -- of the
 12 complaint and it said it is clear that the depths
 13 of soil or respreading were not inadvertently
 14 labeled as the entire table is being revised to
 15 reduce the amounts of topsoil and subsoil being
 16 respread based on what CCMC has represented has
 17 available. I guess I wasn't quite sure what table
 18 you guys were referring to on that one.

19 MR. BRAATEN: I'm going to have to look
 20 myself. I can't remember seeing a table that had a
 21 bunch of those numbers being revised, but I wonder
 22 if that's a different table because it's not any of
 23 the tables we're looking at right now.

24 MR. JOHNSON: No. And I kind of thought
 25 maybe you guys were referencing like table 2.5.4.1

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1 and then 2.5.4.2, which are in the permit, but I
 2 did not see that any revisions were made to those
 3 tables. So as you can see, this table was last
 4 revised, revision 5.

5 MR. SCHUH: So this table that we have up
 6 now, 5.4.2 --

7 MR. JOHNSON: Yeah.

8 MR. SCHUH: -- that shows, I guess, the
 9 SPGM and the respread across the Voigts' property,
 10 and that's the same calculation that's used for the
 11 surrounding landowners, the Swensons as well as the
 12 State of North Dakota; right?

13 MR. JOHNSON: Correct. Yep.

14 MR. VOIGT: Julie is wondering with
 15 respread areas, does the final vegetation have an
 16 effect on what your calculations are?

17 MRS. VOIGT: Cropland versus native.

18 MR. JOHNSON: No, not for total SPGM.
 19 Yeah.

20 MR. SCHUH: Come back to it? Do you want
 21 to come back to it -- do you want to look at it
 22 since --

23 MR. BRAATEN: As far as finding the table
 24 I was looking at when I wrote that, I did, but I
 25 don't think the table itself is, you know, the main

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1 concern --

2 MR. MANN: Sure.

3 MR. BRAATEN: -- at this point.

4 MR. JOHNSON: Okay.

5 MR. BRAATEN: Whenever it's appropriate, I

6 do have just some follow-up questions on that

7 issue.

8 MR. JOHNSON: Sure.

9 MR. BRAATEN: Not the table, but just the

10 general explanation.

11 MR. SCHUH: Do you have anything to wrap

12 up, Monty?

13 MR. JOHNSON: No, I don't. You can fire

14 away.

15 MR. BRAATEN: Okay. So on memorandum 17,

16 am I right that the mine is using subsection 2C

17 with respect to how it's conducting its operations

18 and the PSC is using the calculations from

19 subsection 2A with what the mine is doing

20 operationally under 2C? I know that was a terrible

21 question.

22 MR. JOHNSON: No. I get what you're

23 saying. Yes, we're using the item 2C for the

24 calculations, but, yes, we're using the respread

25 thickness for the area that's being mined by the

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1 truck shovel fleet, but we're doing the same thing

2 where we're taking the most undesirable material

3 occurring in 20 percent or more of the overburden

4 above the coal seam.

5 MR. BRAATEN: And then the way I

6 understand -- and, admittedly, I barely do. But

7 the way I understand 2A, when they say occurring in

8 20 percent or more of the overburden above the coal

9 seam --

10 MR. JOHNSON: Right.

11 MR. BRAATEN: -- if we were doing that

12 just based on how that memorandum normally works,

13 putting aside any kind of truck fleet --

14 MR. JOHNSON: Yeah.

15 MR. BRAATEN: -- would we take on your

16 memo with the attached -- oh, it's on the screen.

17 So if we were applying subdivision 2A outside the

18 context of use of a truck and scraper fleet, would

19 we be looking at the samples above an SAR of 20 all

20 the way down to 120 feet where the top of the coal

21 sits?

22 MR. JOHNSON: Yep. Yep.

23 MR. BRAATEN: Okay.

24 MR. JOHNSON: Yep. So if they -- if they

25 were using the dragline to remove all the material

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1 above coal, then, yes, the projected respread would

2 be a 48-inch just because we can clearly see that

3 20 percent or more of the samples have an SAR above

4 20.

5 MR. BRAATEN: And this might be a question

6 for you, John, but is the change where we don't do

7 -- we don't apply the 20 percent of samples with

8 SAR over 20 to the overburden beneath where the

9 scraper fleet removes, is that just a practice that

10 the PSC has with respect to, you know, we do the

11 same calculation from 1A, but when we're doing it

12 under -- or 2A, but when we're doing it under 2C,

13 the PSC has a policy of taking out essentially the

14 lower overburden from that calculation?

15 MR. JOHNSON: I understand.

16 MR. BRAATEN: You got it?

17 MR. JOHNSON: It all depends on the mining

18 operations.

19 MR. BRAATEN: Specifically whether they're

20 using the truck fleet?

21 MR. JOHNSON: Correct.

22 MR. BRAATEN: Right.

23 MR. JOHNSON: So as clearly -- well, as

24 it's stated in Section 2.5.4, there's a narrative

25 in there that explains it. Let's see. Okay. So

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1 right there, that paragraph.

2 MR. BRAATEN: That's in 2.5.4?

3 MR. JOHNSON: Yeah. And it's also touched

4 on in, I think, like one of the operations sections

5 of the permit. Where the heck is my -- too many

6 papers in front of me.

7 MR. SCHUH: (Indiscernible) else it was.

8 MR. JOHNSON: Seriously, where is it?

9 There we go. In Section 3.1.1.3 they also kind of

10 talk about the mining method using the truck shovel

11 fleet above 85 feet.

12 MR. BRAATEN: 3.1.1.3?

13 MR. JOHNSON: Correct. So, yeah, when I'm

14 reviewing these, you know, the spoil samples in

15 Coyote's projected respread thicknesses, I take

16 into account what they're telling us how they're

17 mining and what they're doing.

18 MR. BRAATEN: Okay. So I understand that

19 there's different calculations done for respread

20 depths postmining, but whether or not they have

21 suitable plant growth material available to

22 respread at those depths is going to be based on

23 what they say and that's going to be based on the

24 projections?

25 MR. JOHNSON: Yeah, essentially. Yep.

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1 Yep. It's kind of the -- it's really like the best
 2 way to really get an accurate projection. And then
 3 on top of that, Coyote, and really all the mines,
 4 they send us an annual soils handling plan that
 5 gives us updates on how much soil they have
 6 stockpiled and then how much area they have to
 7 reclaim, and then it's kind of like a tracking
 8 spreadsheet that says, you know -- right now I
 9 think Coyote is running at a 3.4 percent surplus in
 10 soil, meaning they have enough to respread and
 11 reclaim everything that's currently disturbed.
 12 MR. BRAATEN: Based on the projections
 13 we've been discussing?
 14 MR. JOHNSON: Correct. Yep. Yep. And
 15 because, you know, selectively handling spoil
 16 material, I would say, in I would say my limited
 17 experience, that typically actual soil respread
 18 depths are less than projected.
 19 MR. BRAATEN: Okay. And I'll just say
 20 candidly that's the big concern here.
 21 MR. JOHNSON: Right.
 22 MR. BRAATEN: That the Voigts' coal lease
 23 requires everything to be put back in the same
 24 amounts and so --
 25 MR. JOHNSON: Mm-hmm.

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1 MR. BRAATEN: -- our question, I guess,
 2 for the PSC is, do you guys account for that -- if
 3 there's a private contract that doesn't follow
 4 these calculations, but simply says you need to put
 5 back what you take off of our land, does the PSC
 6 account for that in the total amount required to be
 7 saved?
 8 MR. SCHUH: You're asking if we look into
 9 a private lease and a private outside agreement?
 10 MR. BRAATEN: Yep.
 11 MR. SCHUH: No. Our regulation is set --
 12 the regulatory center is set forth by the state for
 13 our purposes.
 14 MR. BRAATEN: Okay. Do you look -- what
 15 about for commingling of soils, do you guys look at
 16 the lease for that?
 17 MR. SCHUH: Maybe you can discuss the soil
 18 handling plans, whether that's included in that.
 19 MR. JOHNSON: Yeah, I believe that there
 20 is a mixing agreement with all surface owners.
 21 Now, what's done between Coyote and Casey and
 22 Julie, you know, if they have a different
 23 agreement, then we don't -- we don't review that.
 24 MR. BRAATEN: Well -- okay. I'm not going
 25 to cross-examine you, but the mixing agreement is

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1 -- my understanding is that the mixing agreement
 2 they're relying on is the coal lease. So I guess
 3 our perspective, without getting into an argument,
 4 is --
 5 MR. JOHNSON: Sure.
 6 MR. BRAATEN: -- it's either applicable or
 7 it's not, but it's not selectively applicable when
 8 it's helpful to them and then not when it's not
 9 helpful to us.
 10 MR. JOHNSON: Sure.
 11 MR. BRAATEN: Especially when we're
 12 talking about how much suitable plant growth
 13 material goes back on the Voigt land. That's a big
 14 one.
 15 MR. SCHUH: Sure.
 16 MR. BRAATEN: I think for now I don't want
 17 to start an argument with anyone or start
 18 cross-examining.
 19 MR. JOHNSON: Yeah. No, I'll --
 20 MR. BRAATEN: I'll just say candidly
 21 that's the concern that we have is from what I'm
 22 understanding, I understand that what's actually
 23 put down on the Voigt property hasn't been
 24 calculated yet, but I also understand that that
 25 might not be consistent with what we're expecting,

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1 which is that everything that's taken off is put
 2 back on. And if they're not saving enough soil to
 3 do that, there's going to be a question at some
 4 point how they're going to do that, and that's our
 5 concern. And the idea that they can commingle
 6 because a coal lease says it, but they don't have
 7 to follow the provision in the coal lease saying
 8 that they have to put the same amount back, I don't
 9 agree with that.
 10 I think either the coal lease applies or
 11 it doesn't, but, you know, if the mixing agreement
 12 being referenced is just the coal lease, then I
 13 think that the other provisions in the coal lease
 14 talking about that exact same thing about how you
 15 handle suitable plant growth material need to be
 16 reviewed by the PSC as well.
 17 So that's -- that's my pitch, but I will
 18 say you did a really good job. That stuff was
 19 super confusing and both me and Lisa got a migraine
 20 trying to dig through it, and I understand it
 21 really well now so thank you.
 22 MR. JOHNSON: Yeah, no problem.
 23 MR. BRAATEN: Do you guys have any
 24 questions?
 25 MRS. VOIGT: I have a question that

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1 relates to this, I believe. I guess my question
 2 would be on the compaction of the soil. I think
 3 you noted that in the final respread they test just
 4 one foot below for soil sample.
 5 MR. JOHNSON: Yeah, the graded spoils are
 6 what's being sampled.
 7 MRS. VOIGT: Okay. And then when it's
 8 finally being reclaimed, it's reclaimed, and as
 9 it's being reclaimed is there any testing done, is
 10 there any consideration given to the compaction of
 11 the soils especially being that much of this is
 12 going back into native grasslands, which the roots
 13 and trees and you name it are going to be much
 14 deeper, more longer established roots than cropland
 15 that other reclamation might consider? So I guess
 16 my question is on the compaction.
 17 MR. BRAATEN: It took me a while to catch
 18 up.
 19 MR. JOHNSON: Yeah, and it's --
 20 MRS. VOIGT: Sorry.
 21 MR. JOHNSON: I guess --
 22 MRS. VOIGT: That was kind of lengthy. I
 23 didn't know how to get to all that.
 24 MR. VOIGT: And moisture absorption also
 25 on the compaction.

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1 MR. JOHNSON: Yeah. I know I'm not
 2 familiar with any regulations on compaction, but
 3 perhaps --
 4 MR. SCHUH: I think Mr. Welch can speak to
 5 the compaction.
 6 MR. JOHNSON: Yeah. Yeah.
 7 MR. SCHUH: He might be better suited for
 8 than the plants revegetation.
 9 MR. JOHNSON: Right. Yeah.
 10 MR. SCHUH: He'll be available as well.
 11 And I guess to ease your concern, too, as
 12 well, the ones you expressed regarding the soil
 13 mixing -- I initially misunderstood your question.
 14 I might have some follow-up on that as well, but I
 15 would like to have an opportunity to speak to the
 16 staff about how that fully does apply within our
 17 current situation.
 18 MR. BRAATEN: Sure.
 19 MR. SCHUH: So maybe after a quick break,
 20 we can come back to that.
 21 MR. BRAATEN: Sure. And just so that you
 22 -- I guess everyone has a heads-up, there is a
 23 landowner preference statement that's part of the
 24 permit that came from the Voigts that says no
 25 commingling of soils. There's also a provision in

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1 the coal lease that says something about
 2 commingling of soils. I'm sure we can argue about
 3 what that language means, but just to be -- so
 4 everyone is on the same page, there's some language
 5 in the coal lease and there's also a landowner
 6 preference statement.
 7 MR. SCHUH: Any other questions for
 8 Mr. Johnson? Anything from --
 9 ALJ HOGAN: Mr. Mann, did you have
 10 anything?
 11 MR. MANN: No, Your Honor.
 12 ALJ HOGAN: All right.
 13 MR. SCHUH: Call Mr. Welch then. Take a
 14 seat and I hope we will be able to answer some of
 15 these additional questions as well.
 16 MR. BRAATEN: One real quick question.
 17 When you're checking the SAR levels in order to do
 18 those calculations, is it a composite sample?
 19 MR. JOHNSON: I think -- that I'm not
 20 sure. You're talking the premine like soil core
 21 sample --
 22 MR. BRAATEN: No.
 23 MR. JOHNSON: -- or the --
 24 MR. BRAATEN: No. The --
 25 MR. JOHNSON: -- actual spoil samples,

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1 like the graded spoils?
 2 MR. BRAATEN: Yeah.
 3 MR. JOHNSON: We recommended that it's a
 4 composite sample in policy memo 17, but it's not a
 5 strict requirement. That's my understanding.
 6 MR. BRAATEN: I guess I'd have that
 7 question. And I'm not going to put you on the
 8 spot, but if you guys know or --
 9 UNIDENTIFIED SPEAKER: I'll answer it. It
 10 is a composite.
 11 MR. BRAATEN: Okay.
 12 UNIDENTIFIED SPEAKER: Yeah, we end up
 13 taking three or four, I suppose, that are mixed in
 14 so it's not just one whole that it's taken from
 15 so --
 16 MR. BRAATEN: Thank you. That's all I
 17 had. Sorry.
 18 MR. JOHNSON: Can I clarify one other
 19 thing?
 20 MR. BRAATEN: Sure.
 21 MR. JOHNSON: The premine is done on a
 22 40-acre -- one drill hole per 40 acre. On the
 23 postmine it's every 400 feet. So each one of those
 24 has a composite sample taken at a 400-foot grid,
 25 just to clarify that.

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1 MR. BRAATEN: Yeah. The premine is just a
2 soil bore basically. They're sampling every five
3 feet?

4 UNIDENTIFIED SPEAKER: Exactly.

5 MR. SCHUH: All right, Mr. Welch. We had
6 some discussion over the last few days about a
7 number of the issues related to the revegetation,
8 the erosion, and so forth. And I know you have
9 some thoughts on the revision as well as some of
10 the issues that the Voigts have brought forward, so
11 I'm just going to turn it over to you and let you
12 just walk through some of those thoughts, some of
13 the things that you feel may need to be clarified
14 as well as, again, the Voigts' concerns.

15 ALJ HOGAN: Can you turn the microphone
16 on. Thank you.

17 MR. WELCH: You know, with revision 12 and
18 the issues that were raised, you know, it required
19 us to look in more detail about what exactly the
20 permit says, and so, of course, we did that. And
21 like Jeremy pointed out, the variance areas 1
22 through 6 and the delayed native grass seedings was
23 something that was -- the language was put into the
24 permit with revision 9 in 2019.

25 And as I look at the permit today, and

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1 like Jeremy said, he's mentioned this to me that
2 the language is inconsistent between Sections
3 3.1.1.3 and Sections 4.3.1 of the permit. And so
4 with the next round of technical deficiencies, I
5 think there's some further clarification that's
6 needed.

7 And if you would pull up the second page,
8 I think, where -- where it's already been pointed
9 out that even though the six-year -- the six-year
10 requirement was removed in one portion of this
11 permit, it still is listed below the tables. So
12 that needs to be addressed.

13 What was already pointed out, I guess, is
14 the variance -- the revegetation delay for variance
15 -- proposed variance area 7 is essentially a
16 one-year delay because of box-pit spoils.

17 Maybe more importantly, some things that
18 need to be cleaned up, I think, is Section 4.3.
19 And I believe it's page -- yeah, if we can zoom in
20 on that page. There's actually some conflicting
21 language here, I think, that we need to have
22 cleaned up with this pending revision right now,
23 because it references a hayland/precropland mix in
24 Section 4.2.2, but when you go to Section 4.2.2, it
25 says the delayed native grass seedings will be

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1 planted to a different mix, the slender -- the four
2 species, I guess. It would be item number 4 here.
3 So that specifically says the early native grass
4 plantings will be planted to the western, the
5 slender, dropseed and the switch. So that needs to
6 be cleaned up.

7 And one of the things I think, you know,
8 we look at when the mining company asks for a
9 variance, and we looked at it with revision 9, was
10 we ask the most basic question, is granting this
11 variance going to delay bond release? I mean,
12 that's critically important. And in all cases the
13 variances that have been granted in any practical
14 bond release tracked since, it's not going to delay
15 bond -- delay final bond release because final bond
16 release, the ten-year liability period applies to
17 the latest planting on a tract. Okay.

18 So if you were going to bond release a
19 quarter of land, it's that last final seeding that
20 initiates or becomes the ten-year liability period
21 for the entire tract.

22 And so when you look at these variance
23 areas, all of them, at the front end of mining and
24 you look at a logical bond release tract, as mining
25 progresses, it's going to be the later -- the later

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1 areas. So that's something that we look at and
2 it's an important consideration, I think.

3 So in regards to Section 4.3.1 and the
4 changes being proposed with revision 12 to
5 eliminate that six -- seeding within six years of
6 coal removal, I think we do need to clean that
7 language up with that -- with this pending
8 revision, so, quite frankly, there's not a blanket
9 approval for a variance for the entire permit area
10 for the life of the mine. And that -- that will be
11 addressed in this next round of deficiencies.

12 And given that the mining company has a
13 mine plan, they can provide us with some sense of
14 when they might have a logical area. And I think
15 these areas need to be clearly depicted on a map so
16 that everybody involved is clear when, you know,
17 how long the variance will be and then when seeding
18 is planned.

19 So as I look at this, I'm not so sure with
20 revision 9 that some of this language that was
21 written wasn't really applying to those variance
22 areas, but it isn't clear. So we really need to
23 clear -- you know, to clarify some of the
24 inconsistencies that we're seeing here.

25 You know, and along with that, though, I

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1 would say that when it comes to -- you know, the
 2 whole purpose of the delayed native grass seedings
 3 was to -- was to delay planting on the front end to
 4 end up with a better product. And I think that's a
 5 good approach. I agree with that approach, but
 6 there should be a timeline, a limit.

7 And the other point I probably want to
 8 make is that even though we have granted a variance
 9 for the seeding of native grassland, you know, to
 10 delay it, we have not granted any variance for the
 11 requirements to mulch, to stabilize, to plant cover
 12 crops, control erosion. That's not part of the
 13 variance. It's -- all these areas, I think it's
 14 been stated, they need to be mulched and planted
 15 with a cover crop depending on the time of the
 16 year.

17 MR. SCHUH: I guess following up on that,
 18 have you found any point in your inspection of the
 19 mine that there have been -- they have not met the
 20 permit requirements and subsequently had concerns
 21 or thought about issuing an NOPV regarding the
 22 planting and mulching and planting of cover crops?

23 MR. WELCH: No, I haven't seen, I guess --
 24 I don't necessarily get to the mine all the time,
 25 quite frankly, but I know the last time we were up

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1 there they were mulching up in Section 25 on a
 2 recent grade approval where they had just picked
 3 rocks. So the picking rocks, especially on
 4 cropland, you know, is something that needs to be
 5 done and that's done right after topsoil respread
 6 and then -- and then that area is mulched and,
 7 depending on the time of the year, it may be seeded
 8 -- you know, this time of the year you wouldn't
 9 necessarily seed anything because it's, you know,
 10 unlikely to grow or establish enough vegetation to
 11 protect the soil from erosion.

12 I think that's the main points.

13 MR. SCHUH: There was a stockpile -- there
 14 was a photo that was brought up by the Voigts, I
 15 think it's stockpile 30, where they had showed
 16 Russian thistle. Are you aware of, I guess, the
 17 planting and, I guess, the alleged noxious weeds
 18 that is on that spoil pile?

19 MR. WELCH: I think it's the -- I think
 20 the picture was a topsoil pile immediately
 21 southwest of the Voigt farmstead. During the last
 22 inspection, John and I, we looked at the spoil pile
 23 north of pond 0603 and we looked at the subsoil
 24 pond to the north of that and then a topsoil pile
 25 further to the north. And there was evidence that

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1 portions of the -- I guess I probably should deal
 2 with these ponds individually. But the overburden
 3 pile is -- with the exception of the trail leading
 4 to the top, it's been seeded and there's a stand of
 5 grass established on it that's protecting it from
 6 erosion. I didn't see any evidence of erosion on
 7 that overburden pile.

8 The subsoil pile, if memory serves me, it
 9 had been added on over time so the bottom portion
 10 of the side slopes is better vegetated than the
 11 upper areas.

12 And then there's a topsoil pile. It had
 13 been an active pile, and I think it's no longer
 14 active, but I was told that it's -- that it had
 15 been seeded.

16 MR. SCHUH: And I guess just for the
 17 purposes of, I guess, the recording, on Exhibit No.
 18 9, would you just describe where the locations you
 19 are discussing are? Can you point to them and
 20 describe them?

21 MR. WELCH: I'm using a hand, I guess. So
 22 this is a topsoil pile.

23 MR. SCHUH: That's the area -- the green
 24 area on Section 31?

25 MR. WELCH: Correct. This is the subsoil

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1 pile.

2 MR. SCHUH: Okay. The solid brown in
 3 Section 31?

4 MR. WELCH: Correct.

5 MR. SCHUH: Okay.

6 MR. WELCH: And this hashed area is an
 7 overburden stockpile.

8 MR. SCHUH: Okay. Striped area on 31?

9 MR. WELCH: And this is sediment pond 03
 10 -- 0603.

11 MR. SCHUH: 0303 then is the sediment pond
 12 directly south of the discussed piles?

13 MR. WELCH: Correct.

14 MR. SCHUH: So I know there's the one
 15 issue that the Voigts brought up that he has
 16 concerns about, of course, about this, I guess,
 17 wide-open carte blanche time period for the
 18 revegetation. They expressed some concerns about
 19 that. You expressed some concerns about that.
 20 There probably isn't a direct recommendation I'm
 21 assuming from staff at this point except for -- to
 22 the extent that we would like to see some sort of
 23 revision -- we would like to see it revised, of
 24 course, to accommodate some sort of timeline.
 25 Would you say that's accurate?

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1 MR. WELCH: Correct. I think we need to
2 write a deficiency that has them provide better
3 timelines and projections when seeding may occur on
4 specific areas.
5 MR. SCHUH: Okay.
6 MR. Voigt: Should I clarify where that
7 picture was?
8 MR. BRAATEN: Yeah.
9 MR. SCHUH: Sure.
10 MR. VOIGT: So the picture was taken of
11 the stockpile right here.
12 MR. BRAATEN: And you're pointing to the
13 green area to the northwest of Section 30 or the
14 number 30 on the map?
15 MR. Voigt: Yes.
16 MR. SCHUH: Anything else you want to add
17 before they ask you some questions?
18 MR. WELCH: No.
19 ALJ HOGAN: Mr. Mann, go ahead.
20 MR. MANN: Yeah. Mr. Voigt, what was the
21 date on that picture?
22 MR. VOIGT: It would have been late this
23 summer, so August, September of 2022.
24 MR. MANN: Okay.
25 ALJ HOGAN: Do you have any other

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1 questions for Mr. Welch?
2 MR. MANN: I do not.
3 ALJ HOGAN: Mr. Braaten, questions?
4 MR. BRAATEN: I think, yeah. One moment,
5 please, Your Honor.
6 Mr. Welch, I want to go back to what you
7 said about the delay to bond release. What you
8 were saying is that the final planting -- the final
9 planting is what triggers the bond release period?
10 MR. WELCH: For a tract.
11 MR. BRAATEN: For a tract.
12 MR. WELCH: For a bond release tract. And
13 usually mining companies will come in with, you
14 know, like a quarter of land or some logical unit
15 of land, not just -- you know, it's unlikely
16 they're going to bond land in between two ramps or
17 haul roads just for access and other reasons. So,
18 you know, when I look at this mine and I go up
19 north into Section actually 24, you know, once they
20 get, you know, the rest of this area mined, then I
21 can see them coming in down the road, obviously ten
22 years after the last seeding, to bond release that.
23 But when you look at the mine plan, you
24 look at Section 25, which the Voigts own -- let me
25 just say, it's kind of unfortunate, but the Voigts

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1 own Section 19, at least a portion of it where this
2 primary haul road is. They also own Section 30
3 where the primary haul road is, except for the shop
4 office complex. And if you look at the long-term
5 mine plan, like this haul road that goes through
6 Section 25 is going to be used until that date;
7 right? So, you know, unfortunately, Section 25 is
8 going to be tied up with several haul roads for a
9 long time. I can't say for life of mine, but it's
10 a long time.
11 So when you look at each of these areas --
12 could you scroll down, please. When I look at the
13 Voigts' property, you know, and putting myself in
14 their place, if you will, from a when am I going to
15 get my land back, because until it's bond released,
16 it's still -- any permit is still under our
17 jurisdiction and it's still -- it's still, quite
18 frankly, not their property to do whatever they
19 want with because the mining company still needs to
20 manage that land even after it's seeded during the
21 liability period to demonstrate reclamation
22 success.
23 So with that being said, when I look at
24 this mine plan and the Voigt property, potentially
25 this -- this quarter -- this southeast quarter of

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1 Section 30 may be the first tract potentially that
2 the Voigt -- the Voigt land that could be bond
3 released. But if you look at the mine plan -- I
4 can't read that. Is that 2025?
5 MR. SCHUH: 2026, I think.
6 MR. WELCH: '26. So you add three years
7 after that, you're getting into 2029, then you add
8 ten years to that, you're looking at the year 2040
9 before this could potentially be bond released.
10 Likewise, you look at this haul road that runs out
11 here to Section 1, which the Voigts own, I guess --
12 so these variances -- you know, variance, for
13 example, on the state land here in Section 1, this
14 is variance area 7, it's on state school land --
15 MR. SCHUH: 6.
16 MR. WELCH: Section 6?
17 MR. SCHUH: Yep.
18 MR. WELCH: And providing a variance for
19 one year, 2023, when mining is going to continue
20 until this date, whatever that date is, 20 -- it's
21 actually -- the variance is going to have no
22 bearing on when you are going to have a logical
23 unit to bond release, if that makes sense. So,
24 yeah, that's --
25 MR. BRAATEN: Who decides what the logical

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1 units are for bond release?

2 MR. WELCH: The mining company.

3 MR. BRAATEN: Right. And that's our

4 concern, is when you look at the other mines in the

5 state, Falkirk, for example, there's 200 acres of

6 ag land that's been released from bond ever. And

7 so the Voigts' concerns really are with bond

8 release. And I think I understand what you're

9 saying, if there's a delay to seeding for a couple

10 years, is that going to affect bond release?

11 Probably not. But if there's a delay to seeding

12 for ten years, it will.

13 MR. WELCH: I guess even beyond that, I'm

14 not so concerned about the bond release as I am

15 having land put back into production, and with no

16 compensation. I can't speak towards the

17 compensation, but, you know, when I read Section

18 4.3 and the delayed seed mix, the land -- we're

19 really not giving a variance to take the land out

20 of ag production. If I read it, it says the

21 property is going to be hayed, it's going to be

22 planted, utilized in some manner during that

23 delayed period. So to my understanding, it's not

24 the intent to take the land out of production, but

25 it is to -- the delayed seeding is simply delaying

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1 the final native grass seeding or associated land

2 uses such as a woodland.

3 MR. BRAATEN: Does the -- this might be a

4 question for you, John, and if it's too deep and in

5 the legal weeds, we can just talk about it later.

6 But, you know, we talked about stabilizing,

7 mulching, and so forth. Is that -- is that

8 something where the PSC is enforcing the stormwater

9 pollution prevention plans, or are those separate

10 and the PSC has different things it enforces with

11 respect to the reveg and reseeding?

12 MR. SCHUH: I'd have to follow up with you

13 on that one, Derrick.

14 MR. BRAATEN: Yeah, we can talk about that

15 one later. I think that's a little in the weeds.

16 Do you want to -- Julie had a question

17 earlier and we delayed the answer for Guy to answer

18 that one.

19 MR. WELCH: Yeah. To my knowledge,

20 there's no specific standard, if you will,

21 regarding compaction, but it has been our practice

22 when you have an area that's, for example, a

23 subsoil -- there's some haul roads built out of

24 subsoil or there's some corridors where --

25 obviously that have been used and compacted by

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1 heavy equipment over the years. We have required,

2 you know, extensive chiseling, ripping to alleviate

3 compaction to the degree that's physically possible

4 with typical mine equipment, I guess.

5 And then specific to this mine, I guess,

6 we're going to -- you know, there's a couple areas

7 in the primary haul road located north of County

8 Road 12 where that haul road is built out of

9 subsoil. A couple sections are actually a subsoil

10 stockpile within the road. But elsewhere on this

11 mine, to my knowledge, none of the haul roads are

12 constructed out of subsoil. But other than to say

13 that when -- when those types of features where you

14 can expect compaction, we require some measures be

15 taken to alleviate compaction.

16 Beyond that I can only say that, you know,

17 the order that the Commission provided with --

18 regarding compaction a few years ago for this

19 permit for this mining company to begin testing for

20 compaction on reclaimed lands, and there's language

21 in the permit about what the company is planning to

22 do. And I know Jeremy even this last fall, he's --

23 the company has taken measures and purchased

24 equipment and have been doing testing for

25 compaction.

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1 MR. SCHUH: That order, was that from

2 2013, Guy? Is that the correct case?

3 MR. WELCH: I'm not sure it was '19 or

4 '13. I'm not sure. But I just know there was a

5 commission order that required the company test for

6 compaction.

7 MR. SCHUH: Gotcha.

8 MRS. VOIGT: Is there any testing that's

9 going to be in place during the actual reclamation

10 of the actual land? I know Monty noted that they

11 would be doing sampling, you know, 12 inches of the

12 soil, but how about the compaction below that for

13 the roots to penetrate and such? Will there be any

14 type of testing done that way to allow for the

15 native species and trees and everything that's

16 going to grow on that land to be able to flourish

17 over years to come?

18 MR. WELCH: To my knowledge -- the short

19 answer is no. But to my knowledge, the testing of

20 compaction involves the topsoil layer and the

21 subsoil layer. When you get below that, I don't

22 believe the order was talking about compaction of

23 the underlying overburden. That's my

24 understanding.

25 MR. BRAATEN: And just so everyone is

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1 clear, I mean, one of the concerns is, I think
 2 you'd agree, that in your time on native prairie
 3 grasses, a lot of those have rooting depths well
 4 below what we're talking about as simple plant
 5 growth material here at 48 inches. And the concern
 6 is that with anything with a rooting depth below
 7 four feet here, we're -- basically they're going to
 8 hit a wall -- those roots are.

9 MR. WELCH: Yeah. It's my belief that
 10 it's the forbs and the shrubs, quite frankly, that
 11 are probably going to have deeper rooting depths
 12 than our grasses. You know, and I know there was
 13 extensive work done at ARS in Mandan in the early
 14 years of mining to look into some of these to
 15 determine respread depths and even compaction,
 16 quite frankly. But it's been established that in
 17 terms of grass production, it's the top couple of
 18 feet is the giant majority of your root mass for
 19 grass species now. There's exceptions and there's
 20 lots of species of grasses and lots of, you know,
 21 native species of forbs and shrubs. But as a
 22 general rule, that four-foot depth is, my
 23 understanding, to be, you know, the high percentage
 24 of the area where moisture and production is coming
 25 from.

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1 MR. BRAATEN: Okay.

2 MR. VOIGT: So just to follow up with that
 3 then, so you're talking about the root mass and the
 4 growth potential and all that, but as far as
 5 moisture absorption and storage, that is suitable
 6 for much deeper than four feet?

7 MR. WELCH: Sure. There's going to be
 8 moisture stored deeper than four feet.

9 MR. VOIGT: And then with your temporary
 10 grass mixes, not only are they of different
 11 species, but they're a lighter seeding per acre?

12 MR. WELCH: Just to speak towards the
 13 lighter seeding per acre, if you look at NRCS
 14 recommended seeding rates for native grasses -- and
 15 I'm a little outdated because this is back when CRP
 16 was big and I worked for NR -- SCS at the time, but
 17 now they're called NRCS, but a full seeding rate,
 18 for example, for native grasses is typically around
 19 the seven to eight pounds per acre. And what
 20 you're seeing with mining companies is they're
 21 doubling and tripling the recommended NRCS seeding
 22 rate. And they do that for a couple reasons. You
 23 know, that's one point.

24 The other point, I guess, would be the
 25 species being used in the temporary native

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1 grassland seed mix, I mean, the criteria, whether
 2 -- obviously they want them to be native, and we
 3 didn't pick -- the PSC didn't pick these species to
 4 be planted. It was the mining company proposed and
 5 we said if that's what you want to do, then -- you
 6 know, we reviewed it and approved it, but they
 7 picked slender wheat grasses, a short-lived
 8 species, quite frankly, and western, which is a
 9 wonderful species and, you know, it's present time
 10 the native grassland in your mine throughout. Sand
 11 dropseed is more a species for sandy soils. And
 12 the switchgrass, you know, has done well with
 13 reclamation throughout the mine. So you have a --
 14 you do have a combination of warm season and cool
 15 season there. Are they the right species? I guess
 16 I'll let -- you know, different people could argue
 17 if that's the right species to plant.

18 MR. SCHUH: Guy, don't mean to cut you
 19 off.

20 MR. WELCH: That's fine. I'm done.

21 MR. SCHUH: Yeah, cut me off.

22 MR. WELCH: I'm done.

23 MR. SCHUH: We're discussing this
 24 compaction depth, but this isn't notably different
 25 than any other compaction that we see in any other

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1 mines operationally; would you agree with that?
 2 Like they are not doing anything different
 3 regarding -- with regards to compaction than the
 4 other mines are?

5 MR. WELCH: To prevent it, other than like
 6 I spoke to -- you know, I don't believe there's any
 7 subsoil piles being used in the haul road.

8 MR. SCHUH: Sure.

9 MR. WELCH: Other than what I mentioned
 10 north of -- so, yes, they're doing some things --

11 MR. SCHUH: Mm-hmm.

12 MR. WELCH: -- such as not putting any
 13 subsoil in a haul road, but --

14 MR. SCHUH: I guess what --

15 MR. WELCH: -- operationally --

16 MR. SCHUH: I guess what I'm speaking,
 17 specifically revegetation success, is there
 18 anything -- because we have seen revegetation
 19 success at other mines; correct?

20 MR. WELCH: Mm-hmm.

21 MR. SCHUH: Is there anything that they're
 22 doing that would indicate to you that revegetation
 23 success would not occur?

24 MR. WELCH: No.

25 MR. SCHUH: Okay. So this is consistent

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1 with --

2 MR. WELCH: Yes.

3 MR. SCHUH: -- in your experience what

4 you've seen other coal mines do and revegetation

5 success?

6 MR. WELCH: Yes.

7 MR. VOIGT: I guess I'll follow up on that

8 while we're talking about the compaction and we

9 kind of switched off with the temporary grass mix.

10 But part of our concerns are brought from

11 landowners from other mines that are experiencing

12 compaction problems. So that is where our concerns

13 come from.

14 Back to the temporary mix, it wasn't

15 necessarily the species in the mix. It was the

16 seeding rate. And I just wonder by seeding a lower

17 rate, is there some benefit to that? Why would we

18 not just seed full rate? Because I see in some of

19 your inspection reports that you report seeing

20 frills, which is signs of erosion, and to me if you

21 had a heavier seeding rate, you would eliminate

22 some of those frills.

23 MR. WELCH: Like I said, though -- let me

24 grab Section 4.2.2, which is the seed mix, so I can

25 speak specific to it. What I've said is that -- is

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1 on the early native grass seeding, the planting,

2 19.5 pounds per acre, which is two to three times

3 the NRCS-recommended seeding rate. So this is not

4 a light seeding rate. Now, should they add --

5 should they add more cover crop? Perhaps, you

6 know. But I think regardless of the seeding rate,

7 you know, there's going to be instances where you

8 have drought or whatever reasons where you maybe

9 have a crust on the soil surface that prevents

10 seedling establishment. So there's a lot of

11 factors that go into, you know, the seedling number

12 that establish, for example, per square foot.

13 There's a lot of factors that come into what

14 establish rather than simply the seeding rate.

15 Because as you can see, this is 61 seeds per square

16 foot. NRCS, historically they recommended 25 seeds

17 per square foot as a full seeding rate.

18 MR. BRAATEN: Does the mine or does the

19 PSC calculate the seeding rate and specifically the

20 PLS?

21 MR. WELCH: We review -- we review the

22 plan. We don't dictate the species being seeded

23 other than I pushed hard for forbs to be planted on

24 native grassland over the years. But we don't

25 dictate -- we don't dictate that.

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1 MR. BRAATEN: Okay.

2 MR. VOIGT: I guess you've referenced the

3 NRCS guidelines several times, and I think from our

4 previous hearings it's been said that you strictly

5 and closely follow the NRCS recommendations. That

6 would be correct?

7 MR. WELCH: Yeah, the mining companies.

8 As a general rule, sometimes that's the best

9 technology currently available in terms of -- of

10 revegetation, for example.

11 MR. VOIGT: So according to the NRCS, and

12 I'm a little remiss on the actual timing, but I

13 believe it was around 2008, they changed their

14 recommendations from monitoring the chemical makeup

15 of the soils to looking at the biological makeup of

16 the soils, but yet you guys do not look at that?

17 MR. WELCH: We do not have a performance

18 standard, for example, for soil health. Neither

19 does SMCRA. I mean, our rules are as good or

20 better than the federal requirements. So, no, we

21 don't have a performance standard for soil health.

22 MR. SCHUH: And following up on that, to

23 create a performance standard, what would the

24 Commission have to do?

25 MR. WELCH: Go through the rulemaking

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1 process, I would believe.

2 MR. SCHUH: Right. It would have to be

3 approved?

4 MR. WELCH: You know, you would have to

5 have the background with, you know, NDSU and

6 whatever the experts are --

7 MR. SCHUH: Sure.

8 MR. WELCH: -- and figure out what it is

9 and go through the process.

10 MR. SCHUH: So -- but currently our

11 regulations and our statutes are consistent with

12 SMCRA?

13 MR. WELCH: Correct.

14 MR. VOIGT: So then one last question.

15 Back when you were talking about the maps and the

16 bond releases, why is it that there's so many small

17 tracts? So, I mean, essentially this mine has been

18 operating for seven years and there's no sizable

19 tracts that are suitable to be reclaimed?

20 MR. WELCH: Yeah. Well, in terms of the

21 native -- suitable in size for native -- mining is

22 a slow process and obviously you know they're

23 spread out for several miles on your property

24 for -- I understand because of coal quality

25 requirements.

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1 With that being said, specific, for
 2 example, to Section 25, it's my understanding that
 3 the Coyote Creek Mine is putting back a significant
 4 additional acreage of cropland on Section 25 that
 5 was previously native grassland. So, you know,
 6 there's factors that come into it in terms of the
 7 location of the roads, the ramps, sediment ponds.
 8 There's drainage patterns. There's a number of
 9 reasons where they may need to leave a drainage
 10 pattern open, you know, until end of mining because
 11 everything down south is going to drain to pond
 12 0603. So, you know, that pond is -- until you're
 13 out of that watershed, you're going to have a
 14 drainage that's open, and that's just not going to
 15 make feasible to -- it's the way the land lays and
 16 the mine plan dictates whether or not you're going
 17 to have small, irregular pieces or not.
 18 MR. VOIGT: Well, now that we got the
 19 whole map up here again, I mean, there's obviously
 20 the two main east-west drainages, one down in
 21 Section 6 that continues over into Section 1 and
 22 the one that's in Section 31 and continues over
 23 into Section 36. Other than that, most of that
 24 delayed reclamation is because of haul roads.
 25 MR. WELCH: Well, let me clarify something

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1 here. And that's something that the mine might
 2 need to look at with revision 8 -- or revision --
 3 pending revision 12. And mining companies do not
 4 need a variance from the reclamation requirements
 5 for areas actively being used to support mining.
 6 In other words, they don't need a variance for a
 7 sediment pond. They don't need a variance for a
 8 haul road. They don't need a variance for an
 9 overburden stockpile. It's actively being used to
 10 support mining. Okay.
 11 So it's only those areas that are not
 12 actively being used for mining that they would need
 13 a variance to the reclamation requirements, the
 14 timelines.
 15 So when you look at this -- and a good
 16 example, I think, is variance area 6. It's just a
 17 really small area right here. It's like most of
 18 that area they depicted is part of a stockpile and
 19 part of a haul road. You look at it and you go, I
 20 don't know that they even need a variance for this
 21 area, quite frankly.
 22 You look at their mine plan and they're
 23 planning a haul road coming right down through this
 24 variance area according to their mine plan. And
 25 you look at that and you go, Well, do you even need

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1 a -- do you even need a variance for that, right?
 2 Typically where you find variances is
 3 where -- where -- at the beginning of mining where
 4 you have box-cut spoil and you can't get rid of the
 5 overburden in a timely manner and, secondly, where
 6 you have two pits -- where you have two pits meet
 7 each other where the mining is staggered. And you
 8 have that right here. So it's two pits that are
 9 staggered is what -- is why there's a variance
 10 here. Otherwise, they would be reclaiming and then
 11 redistributing. So I don't know if that explains it
 12 well enough but --
 13 MR. VOIGT: I guess in your first
 14 explanation you just talked a lot about roads.
 15 MR. BRAATEN: I have something unrelated.
 16 Is that all right if I go off topic here?
 17 We were talking about the seeding rates
 18 and, I guess, two things. Do you know if they're
 19 actually using a PLS and, two, do you know what
 20 kind of seeding methods they're using, specifically
 21 whether they're using the NRCS-recommended methods
 22 for seeding these grasses?
 23 MR. WELCH: The pure live seed in Section
 24 4.2.2, it says they're seeding pure live seed. So
 25 if they buy seed that has a lot of seed that isn't

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1 going to germinate or that has other material other
 2 than seed in it, that's all factored in to make
 3 sure we're seeding pounds of pure live seed, not
 4 just bulk.
 5 MR. BRAATEN: How do you verify that,
 6 though?
 7 MR. WELCH: I have -- not necessarily at
 8 this mine but at other mines, I've looked at the
 9 seed tags and at the drill and said, okay, this is
 10 what you said you're seeding -- I won't name names,
 11 but you look at it and you can see it. Do we have
 12 a strict practice to do that? Not necessarily, but
 13 I have done that. And I'm sure Jeremy would
 14 provide us with -- you know, with the seed tags.
 15 And in terms of their drill, I understand
 16 they have a Truax drill and that it's built -- it's
 17 made for seeding native grasses and fluffy seeds
 18 and it has agitators and it has depth bands and it
 19 is designed to seed native grass. And I think -- I
 20 believe that's what NRCS would normally recommend.
 21 MR. BRAATEN: I don't have anything else.
 22 MRS. VOIGT: Back to soil health, just
 23 because it is such a concern of mine, us as
 24 ranchers, soil health is everything to us. I mean,
 25 people think we raise cattle. We don't actually

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1 raise cattle. We raise grass and grass feeds our
 2 cattle and that's what we make our living on. So
 3 soil health is of utmost concern to us at all
 4 times. And throughout generations on this ranch
 5 it's been our top concern. Is there anything that
 6 -- you've said that there isn't anything in place
 7 at this time, but is there anything that we can
 8 look at going forward as to implement ways to be
 9 concerned with soil health in the reclamation of
 10 the ranch so that when it is reclaimed in its final
 11 state, that the soil health is back to full native
 12 capacity?

13 MR. WELCH: And I'm not the soil health
 14 expert, I'll say that right upfront, but I do know
 15 as time has went on, it's been a nice buzzword for
 16 NRCS, you know, and, quite frankly, it's -- I don't
 17 know that people -- there's probably different ways
 18 to define it and how to measure it. And there's
 19 been some -- you know, I know there's some
 20 university work that's quite extensive. It's not
 21 an easy thing to measure from what I understand.
 22 But I think there are becoming methods that are
 23 more usable, and I would certainly hope the mining
 24 companies would use the best technology currently
 25 available. And as -- as the measurement methods

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1 become more standardized and simplified, if you
 2 will, and not unreasonably costly, I would think
 3 that the mining companies would measure that on
 4 their own.

5 MR. BRAATEN: I have one specific question
 6 to follow up on that. Would planting forbs and
 7 other deep-rooting species help with compaction
 8 below the suitable plant growth material during the
 9 reclamation phase?

10 MR. WELCH: I think there are species that
 11 could help reduce compaction.

12 MR. BRAATEN: Okay. I mean, for the
 13 record, we're asking for that as having species in
 14 that seed mix that are going to do the deep rooting
 15 and help with some of that compaction long term, so
 16 not just being rhetorical.

17 MR. WELCH: And just if I can, are you
 18 talking the delayed seeding mix and the permanent
 19 seed mix?

20 MR. BRAATEN: Yeah.

21 MR. WELCH: Okay.

22 MR. BRAATEN: All right.

23 ALJ HOGAN: All right. Anything else from
 24 Mr. Welch?

25 MR. WELCH: I think I heard Derrick this

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1 morning say we were going to be done by noon.
 2 MR. BRAATEN: I did.

3 MR. MANN: I don't have anything, Your
 4 Honor.

5 ALJ HOGAN: That should tell you you won't
 6 be done by noon. That's how that goes.

7 All right. Mr. Schuh, did you have other
 8 staff members you were going to have provide
 9 information?

10 MR. SCHUH: No. These were really the two
 11 we had available to answer some questions. It
 12 might be worthwhile just to kind of get out and
 13 have a discussion with staff and see if there's
 14 anything else that probably needs to be addressed
 15 in relation to this. But there is one thing that I
 16 think may be helpful. I mean, we've had this
 17 informal conference and, of course, you provide
 18 recommendation on the seed mixes, but now that
 19 you've had the opportunity to have some -- you
 20 know, ask your questions, and so forth, get to know
 21 exactly where you feel there may be deficiencies --

22 MR. BRAATEN: Sure.

23 MR. SCHUH: -- in this revision process,
 24 you know, subsequent remedies and so we could
 25 actually have maybe a discussion of what is

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1 required and what paths there are forward.

2 MR. BRAATEN: Yeah, I guess I'd say I
 3 agree with that. I think that makes sense. One, I
 4 guess, question I have so that we're not --
 5 Mr. Welch referred to a potential technical
 6 deficiency letter coming out, and I guess to the
 7 extent anything is going to be addressed in that, I
 8 just want to know if we should do this before or
 9 after that happens, because if we do it before, it
 10 may be that something we say is addressed in the
 11 letter but also vice versa, if they do the letter
 12 first -- you know, it affects both. So I think I'm
 13 okay either way, but I think --

14 MR. SCHUH: Sure. I guess I would
 15 probably prefer to do them both concurrently to a
 16 degree just because, you know, once we do our final
 17 review, I'm not exactly sure what necessarily is
 18 going to address your concerns, the matters you
 19 think are going to be concerned unless they're
 20 communicated. And we'll probably have a number of
 21 subsequent -- I mean, not absolutely, but we may
 22 have a number of continuing deficiencies as we work
 23 towards a final product. So, of course, you'll be
 24 aware of.

25 MR. BRAATEN: Yeah, and we'll work to get

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1 that in as soon as we can here because that makes
 2 sense. Yeah, maybe it is something you can
 3 already -- you can address it. I'm just trying to
 4 think of timing here. If we got that to you in one
 5 week.

6 MR. SCHUH: Well, I don't think we can
 7 discuss it today, but I understand that maybe you
 8 need a little time.

9 MR. BRAATEN: Oh, oh.

10 MR. SCHUH: You know what I mean? I was
 11 hoping to actually have some of that discussion
 12 today to the degree of the things you know based
 13 upon what you've heard.

14 MR. BRAATEN: Yeah, yeah. Okay. Sure. I
 15 can do that now.

16 MR. VOIGT: Take a break and then come
 17 back.

18 MR. SCHUH: Sure. We can take a little
 19 time.

20 MR. BRAATEN: Yeah, why don't we do that,
 21 just so I make sure I'm not leaving anything out.

22 ALJ HOGAN: Sure. Fifteen minutes, is
 23 that sufficient?

24 MR. BRAATEN: Ten.

25 MR. SCHUH: Yeah, absolutely.

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1 ALJ HOGAN: Or do you want to take a full
 2 lunch break? That would be the other option.

3 MR. SCHUH: You know, actually maybe half
 4 an hour would be nice --

5 ALJ HOGAN: Okay.

6 MR. SCHUH: -- just to sit down and make
 7 sure that staff --

8 ALJ HOGAN: Sure.

9 MR. SCHUH: -- has their stuff together.

10 ALJ HOGAN: So reconvene at one o'clock?

11 MR. BRAATEN: Okay.

12 ALJ HOGAN: Okay.

13 (Recess taken.)

14 ALJ HOGAN: All right. We're going to get
 15 started again. I think where we left off, we were
 16 talking about a list of deficiencies from
 17 Mr. Braaten.

18 MR. SCHUH: Judge, I guess specifically, I
 19 mean, the permitting process in and of itself, it's
 20 a -- to the extent that the current operations and,
 21 of course, the permit does not meet the performance
 22 standards as set forth in the law and regulations
 23 is really what we're looking for.

24 ALJ HOGAN: Okay.

25 MR. SCHUH: And actually had that

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1 clarification. Make sense?

2 MR. BRAATEN: It does make sense. It does
 3 make sense. I'm not, however, prepared to cite to
 4 38-14.1-24 and specifically which performance
 5 standards we're discussing, but what I did do is
 6 try and create a concrete, discrete list of items,
 7 I guess, that we'd like to see considered. And one
 8 of the them -- you know, I don't know where this
 9 fits into that in particular, but testing for soil
 10 compaction prior to the respreading. And sort of
 11 tied to that I would say is -- the other thing we'd
 12 request is some kind of requirement for forbs or
 13 some kind of a deep-rooting species to be included
 14 in the preliminary seed mix.

15 What I -- so one other one specifically is
 16 a limit on the reseeding delay for these variances.
 17 I understand from the discussion we've had here
 18 that it wasn't the PSC's intent to say that they
 19 have, you know, an indefinite time period to do
 20 reseeding, but our concern is that's how we read
 21 it, and we want to see a reasonable limit. If
 22 they're saying they want to reseed a year later or
 23 something, that's one thing. If they're saying
 24 they want to do it ten years later, that's a big
 25 concern.

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1 And then the other is -- it's related to
 2 respread depths and the soil types. I do
 3 understand how the PSC is doing these calculations,
 4 and I also understand that the projected respread
 5 is not the same as the actual respread at the end
 6 of mining, but the concern is that the coal lease
 7 here specifically requires the same amounts to come
 8 back on the Voigt property and so there's a concern
 9 if they're not saving enough soil, are they going
 10 to have enough to do what they're required to do
 11 there.

12 Similarly, that same provision allows some
 13 commingling. There's also a landowner preference
 14 statement that says no commingling, and I think the
 15 PSC has to make a decision on which of those it's
 16 following, but even the allowed commingling and the
 17 lease doesn't allow them, for example, to start
 18 mixing soil types on a topsoil pile. And so that
 19 again is something where we had a concern about it
 20 now and how that's going to work when we get to the
 21 point of respread and what we're doing now.

22 The other thing I'd say is Mr. Voigt -- we
 23 have one issue we'd like to just address briefly
 24 because it kind of came up earlier, but we want to
 25 make sure we have that on the record. The other

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1 one I think I can address, and you can follow up if
 2 you want, but I understand and appreciate the
 3 request from John to kind of give -- and probably
 4 for the mine, too, to give an idea of what the
 5 specific things are we're requesting in this permit
 6 revision.
 7 The other thing is we're literally
 8 learning this in this informal conference, and
 9 we've learned a fair amount today, and my
 10 assumption is that the mine is going to be able to,
 11 you know, almost daily communicate with the PSC and
 12 staff to discuss this, and we would like a similar
 13 opportunity to just have communications with PSC
 14 staff and input, for example, if the -- and I'm not
 15 trying to say the PSC is going to do anything one
 16 way or another, but let's just say the PSC was
 17 considering some kind of a time limit on the
 18 variance reseeding. We'd like to be able to have
 19 input and talk about that, and if the PSC says
 20 we're looking at a 20-year time period, we'd
 21 probably say that's too long. So it's just things
 22 like that we would appreciate it if we can have
 23 some ongoing discussions. And that's not to put
 24 the onus on the PSC to have those discussions with
 25 us. It's just a request that the PSC be open to

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1 those communications from us as well.
 2 And just to be clear, I don't mean
 3 communicating with the commissioners, if there's
 4 any concerns about ex parte, I mean, with the
 5 staff. And sorry, if you want to address that
 6 first, we can. Mr. Voigt did have one other
 7 specific issue related to the permit he wanted to
 8 cover as well. I know I'm kind of getting out of
 9 order here --
 10 MR. SCHUH: No. Let's finish up.
 11 MR. BRAATEN: Why don't you --
 12 MR. VOIGT: Is there a better map that
 13 would --
 14 MR. BRAATEN: Show it.
 15 MR. VOIGT: It's my recollection that
 16 somewhere in this revision there was discussion
 17 about the landowner access road, so I don't know if
 18 that was in a review or if that was in a revision,
 19 but the question was posed to the mine by the PSC
 20 if the landowner access road was being used for
 21 mine purposes. I do not know what the answer to
 22 that question was or what input was given there.
 23 What I do know is my access is being
 24 restricted on that road because they're calling it
 25 an active mine area. Well, if it is only a

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1 landowner access road, I do not believe it should
 2 be considered an active mine area.
 3 ALJ HOGAN: Where's that road at?
 4 MR. VOIGT: It would be to the west of the
 5 farmstead going from Section 31 through Section 36.
 6 UNIDENTIFIED SPEAKER: (Indiscernible.)
 7 MR. VOIGT: I don't think it showed on
 8 this map at all.
 9 UNIDENTIFIED SPEAKER: (Indiscernible.)
 10 MR. BRAATEN: Okay. I think that's all we
 11 have to present.
 12 ALJ HOGAN: Okay. Mr. Schuh, did you have
 13 a --
 14 MR. SCHUH: (Indiscernible) opportunity,
 15 Your Honor.
 16 ALJ HOGAN: Oh. Did you want to comment
 17 about that last issue raised or --
 18 MR. MANN: We can. Just a couple --
 19 ALJ HOGAN: Turn your mikes on. Thank
 20 you.
 21 MR. MANN: Jeremy, did you have a comment
 22 on that?
 23 MR. ECKROTH: Yeah. On that landowner
 24 access road, it's an MSHA. It's not a PSC issue as
 25 far as if it's considered an active mine area. And

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1 we do have equipment working in that area, crossing
 2 that road. They don't run on the road, but they
 3 cross perpendicular to that road as well, as that
 4 landowner access road does cross our haul road as
 5 well. So that's why it is considered an active
 6 mine area. It doesn't mean there's equipment
 7 running on the road lengthwise with it, but that's
 8 the viewpoint that MSHA has taken on it.
 9 MR. BRAATEN: So just to follow up, and
 10 I'm not trying to argue with Mr. Eckroth. I agree
 11 with what he said. But we don't agree with the
 12 mine that the Voigts are subject to MSHA. They're
 13 not mine employees. But the mine has taken a
 14 position that they can't use that road without MSHA
 15 training, and so this question of whether that's
 16 designated as an active mining area is really
 17 important for them to be able to use their own
 18 access road. And to the extent the PSC doesn't
 19 consider a landowner road that is crossed by the
 20 mine at times to be an active mining area, that's
 21 very significant for the Voigts to be able to
 22 continue accessing their property.
 23 MR. MANN: Again, this was addressed in
 24 2019, another one of the topics that has already
 25 been addressed and decided.

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1 MR. ECKROTH: And I'd clarify as well that
2 they can use it with a -- with an escort.
3 MR. BRAATEN: A what?
4 MR. ECKROTH: That we'd escort them at any
5 point.
6 MR. BRAATEN: And just to respond to
7 Mr. Mann, this was not addressed in 2019. The
8 prior dispute with respect to the road was whether
9 or not they got to put the road and move this to a
10 different location, and he's right that that went
11 up to the Supreme Court. That was dealt with.
12 What we're talking about now is whether or not this
13 continues to be an active mining area under
14 revision 12.
15 MR. VOIGT: And even if it does, maybe we
16 can alter something to make a different
17 intersection for mine traffic to where it could be
18 considered a nonactive mine area.
19 MR. MANN: Your Honor, I don't know if now
20 is the appropriate time to address the other issues
21 or some of them.
22 ALJ HOGAN: Sure.
23 MR. MANN: I think we have some comments
24 on those.
25 ALJ HOGAN: Okay.

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1 MR. MANN: With respect to also
2 compaction, I mean, we follow the -- you know, we
3 do follow the current laws, regs as they exist.
4 We'll continue to do so.
5 And then on the forbs, the seed mix, I'll
6 let Mr. Eckroth address that. A lot goes into
7 these things, the planning, the seed mixes,
8 everything associated with the mining, the permits.
9 They put a lot of time and effort into determining
10 what is and isn't appropriate and there is, you
11 know, reasoning behind that. And, you know, it's
12 not just something slapped together, but
13 Mr. Eckroth can specifically address, you know, the
14 forbs request.
15 MR. ECKROTH: Yeah, part of that -- and I
16 understand what you're requesting on that. The
17 problem with that is -- the reason we're going to
18 that temporary native mix is for management
19 purpose. So if we have any weeds with an initial
20 seeding, if there's weeds, if there's brome grass,
21 if there's other species that -- say broadleaf
22 species, mainly weeds, if you put forbs in, then
23 you can't spray, because if you spray a broadleaf
24 herbicide, you're killing your forbs off. So it's
25 limiting your management tool, which was the whole

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1 purpose of having that temporary seed mix in. If
2 not, it would just go to the native -- final native
3 mix kind of like we had discussed earlier, if that
4 makes sense.
5 MR. BRAATEN: Yeah, and we would just say
6 that if you're going to spray, you're going to
7 spray and kill everything there whether you got
8 forbs in there or not. But if you're not certain
9 you're going to spray, then it's possible those
10 forbs would be helping decompact.
11 MR. MANN: And on the reseeding, I think
12 that that's something that the reclamation staff --
13 or the timing on reseeding reclamation staff
14 mentioned. And the mine is going to be prepared
15 to, you know, address -- to the extent that the
16 reclamation staff wants time frames with respect to
17 certain locations, that the mine will certainly
18 comply with that.
19 And then, I mean, the other issue, the
20 respread depth, again, that's -- I'm not sure if
21 they're fully kind of understanding what was kind
22 of put together on that, but to the extent that,
23 you know, they're trying to bring in the lease --
24 the terms of the lease speak for themselves. I
25 don't think we're necessarily in agreement with

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1 their interpretation of the lease. But, again,
2 that's really not something that really becomes a
3 part of the PSC's proceedings. It's kind of beyond
4 the scope. That's all I have.
5 ALJ HOGAN: All right. Mr. Schuh, any
6 comments?
7 MR. SCHUH: I guess just a couple, Your
8 Honor.
9 The -- I guess to the extent -- I know
10 certainly access wasn't something that the informal
11 was noticed to actually discuss, but I'll take it
12 under advisement, so it will be a consideration of
13 what you provided.
14 And regarding the communication, of
15 course, as we move forward, any deficiencies, you
16 guys already receive that as well, right, and I'm
17 sure staff would probably echo that we would be
18 certainly open to that discussion. I mean,
19 ultimately the work's our work.
20 MR. BRAATEN: Right.
21 MR. SCHUH: But, you know, communication
22 on that.
23 I guess regarding the other issues of -- I
24 mean, that we've already provided testimony on
25 that, actually going back and taking a look at the

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1 leases and commingling and the mixing agreement, I
 2 guess I really don't have anything additional to
 3 add to that for the most part at this time. But,
 4 yeah, we'll probably follow up with some sort of
 5 recommendation at least as it relates to the -- for
 6 sure on the time period. I'm not sure whether it's
 7 through a deficiency letter. Kind of -- that's one
 8 of the concerns that you have as well, having
 9 something concrete. I'll communicate with you as
 10 well on that moving forward. Ideally we could have
 11 something in the revision that's agreeable to
 12 everybody.

13 ALJ HOGAN: Okay. Anything further for
 14 the conference today? It's my understanding the
 15 process for these procedures is there's a
 16 recommended decision made following this and
 17 parties submit proposed findings, proposed
 18 decision?

19 MR. SCHUH: That's correct.

20 ALJ HOGAN: Proposed recommended decision.

21 MR. SCHUH: Yeah. It's a little bit
 22 unique, Your Honor, from the standpoint that the
 23 Commission ultimately approves it.

24 ALJ HOGAN: Okay.

25 MR. SCHUH: I mean, you -- the ALJ

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1 through, of course -- a substantive ALJ provides a
 2 recommended order subject to commission ultimate
 3 approval of the informal order.

4 ALJ HOGAN: It's 30 days?

5 MR. SCHUH: Yes, Your Honor.

6 ALJ HOGAN: And that's when the Commission
 7 needs to have the order signed by?

8 MR. SCHUH: That's correct.

9 ALJ HOGAN: So when does the recommended
 10 need to be to them?

11 MR. SCHUH: Knowing that -- this is an
 12 assumption, we would be receiving it, you know,
 13 days prior to that. I might just pull out the
 14 calendar real quick if I could take a look.

15 ALJ HOGAN: Yeah, please do.

16 MR. SCHUH: So the 12th falls on the -- on
 17 a weekend, so, you know, ideally we would have it
 18 by -- especially since we have a commission meeting
 19 on the 10th, a recommended order from the ALJ by
 20 the 8th or 9th of November.

21 ALJ HOGAN: 8th or 9th. Okay. So a
 22 deadline for proposed, 26th?

23 MR. SCHUH: That works for the staff.

24 ALJ HOGAN: Is that okay with the parties?

25 MR. BRAATEN: Yeah.

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1 MR. MANN: Yes, Your Honor.

2 ALJ HOGAN: So November 26th will be the
 3 deadline to submit proposed recommended findings.
 4 Then just one final question. I have as
 5 far as the photos and videos submitted by the
 6 Voigts, is that going to be on the docket -- the
 7 electronic docket?

8 MR. SCHUH: We could docket that.

9 ALJ HOGAN: Okay. Then I'll just
 10 reference it as docket numbers then.

11 MR. SCHUH: Sure.

12 ALJ HOGAN: Okay.

13 MR. BRAATEN: You said November 26th. I
 14 think October 26th?

15 ALJ HOGAN: I'm sorry. You're right. I
 16 even wrote down November. October 26th. Thank
 17 you.

18 All right. Anything else for today?
 19 Mr. Braaten?

20 MR. BRAATEN: No, Your Honor.

21 ALJ HOGAN: Mr. Mann?

22 MR. MANN: No, Your Honor.

23 ALJ HOGAN: Mr. Schuh?

24 MR. SCHUH: No.

25 ALJ HOGAN: All right. I'll note for the

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1 record then it's 1:20 p.m. and that will conclude
 2 our informal conference for today.

3 MR. BRAATEN: Thank you.
 4 (Concluded at 1:20 p.m., the same day.)

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1 CERTIFICATE OF COURT REPORTER

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3 I, Denise M. Andahl, a Registered

4 Professional Reporter,

5 DO HEREBY CERTIFY that I transcribed the
6 foregoing tape recording had and made of record at
7 the time and place hereinbefore indicated.8 I DO HEREBY FURTHER CERTIFY that the
9 foregoing typewritten pages contain an accurate
10 transcript of the audible portions of the audiotape
11 recording.12 Dated at Bismarck, North Dakota, this 14th
13 day of July, 2023.

14

15

16

Denise M. Andahl
Registered Professional Reporter

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