

**Thompson, Pamela J.**

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**From:** efilngmail@tylerhost.net  
**Sent:** Tuesday, July 18, 2023 4:15 PM  
**To:** Thompson, Pamela J.  
**Subject:** Filing Accepted for Case: 08-2023-CV-01338; Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.; Envelope Number: 5273108

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**North Dakota  
Court System**

## Filing Accepted

Envelope Number: 5273108  
Case Number: 08-2023-CV-01338  
Case Style: Casey Voigt, et al. vs. North Dakota  
Public Service Commission, et al.

The filing below was reviewed and has been accepted by the clerk's office. You may access the file copy of the document filed by clicking on the below link.

Filing Details	
<b>Court</b>	Burleigh County
<b>Case Number</b>	08-2023-CV-01338
<b>Case Style</b>	Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.
<b>Date/Time Submitted</b>	7/18/2023 2:01 PM CST
<b>Date/Time Accepted</b>	7/18/2023 4:13 PM CST
<b>Accepted Comments</b>	
<b>Filing Type</b>	Exhibit
<b>Filing Description</b>	CR Exhibit 27 - First Technical Review Letter with attachments
<b>Activity Requested</b>	EFile
<b>Filed By</b>	Pamela Thompson
<b>Filing Attorney</b>	John Schuh

Document Details	
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<b>Lead Document Page Count</b>	11
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# Public Service Commission

## State of North Dakota

COMMISSIONERS

Julie Fedorchak  
Randy Christmann  
Sheri Haugen-Hoffart

*sent via email only*

September 12, 2022

600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480  
Web: [www.psc.nd.gov](http://www.psc.nd.gov)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
Phone: 701-328-2400  
ND Toll Free: 1-877-245-6685  
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TDD: 800-366-6888 or 711

Mr. Jeremy Eckroth  
Environmental Manager  
Coyote Creek Mining Company, LLC  
6502 17th St. SW  
Zap, ND 58523  
[Jeremy.Eckroth@nacoal.com](mailto:Jeremy.Eckroth@nacoal.com)

Dear Mr. Eckroth:

The Reclamation Division has conducted a technical review of the application for Revision No. 12 to Permit NACC-1302. Please address the following items and add responses to our May 25th midterm review letter to your next submittal of Revision 12. A copy of our May 25th letter is attached for your convenience.

### **Section 2.2 – Surface Water Hydrology**

1. Please include the deactivation year of MS-CCT1 within Section 2.2.5.2 (Surface Water Monitoring Sites and Monitoring Schedule). (BSM)

### **Section 2.5 – Soil Resources**

2. It appears that the potential SPGM respread depth associated with boring CC12016C, located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 25, was incorrectly changed to a respread depth of 36 inches in Section 2.5.7 (Projected Soil Respread Depth Map). Based on the spoil sample analyses from Section 2.1.7 (Overburden Sample Analyses), the projected soil respread depth for the area associated with CC12016C should be 48 inches due to one spoil sample within the pre-bench fleet removal interval (0-25 feet below ground surface) having a sodium absorption ratio (SAR) greater than 20. This undesirable spoil property makes up twenty percent or more of the overburden material that will be removed by the pre-bench fleet. Also, the respread depth change associated with boring CC12016C was not listed in Section 1.1.2 (Revision Summary). Please revise Section 2.5.7 (Projected Soil Respread Depth Map) as necessary. (MLJ)
3. Please revise Section 2.5.4.2 (Soil Respread Depth Table) to account for the changes made to the respread thicknesses in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 25. (MLJ)

### **Section 3.1 – Operations- General**

4. Please revise the Reclamation Procedures and Schedule, Section 3.1.1.3, to discuss that contemporaneous reclamation may not be possible for the 2019 and 2020 coal removal areas adjacent to the federal coal in the SW $\frac{1}{4}$  of Section 24 because of delayed federal mine plan approval. A variance from the contemporaneous reclamation requirements might be needed for

pits adjacent to the federal coal if mine plan approval is further delayed. The situation might be considered an unplanned cessation of mining. (GAW)

5. Section 3.1.1.8.2 (Overburden Calculations) does not include sedimentation pond P25-03 in the calculation. Please update the calculation to include the reclamation of P25-03. Additionally, please update any subsection of Section 3.1.1.8 (Reclamation Costs) to reflect this change. (BSM)

### **Section 3.3 - Surface Water Management**

6. The Reclamation Division believes the construction of sediment ponds P24-05 and P24-06 and the removal of additional SPGM in the SW¼ of Section 24 other than that necessary to mine private coal should be delayed until federal mine plan approval has been granted to remove federal coal in the SW¼ of Section 24. Please consider revising the pond construction narratives, Sections 3.3.27 and 3.3.28, to mention that construction of the ponds may be delayed until federal mine plan approval. (GAW)

### **Section 4.1.1 – Post Mine Land Use Narrative**

7. Please review the public road discussion on page 4 of Section 4.1.1 and update if easements have been secured in Section 36 for the final location of a post-mining public road. The Post Mining Topography and Land Use Map, Section 4.1.2, continues to show this road on the east-west quarter line in Section 36 as described in the agreement in Section 1.2.8, Road Closure Documents. This road needs to be addressed in grade approval requests. Please clarify if easements have been secured for this road through Section 36, included them in Section 1.5.1 if obtained, and discuss if any changes are planned for the final location of this road. It is not clear if the road embankment will be constructed with spoil or if it will be constructed with subsoil after subsoil has been respread on grade approved areas. (GAW)

Attached are copies of review responses to the revision application from the following advisory committee members: United States Fish and Wildlife Service, North Dakota Department of Environmental Quality, North Dakota Department of Water Resources, and North Dakota Parks and Recreation. Their review did not result in any deficiencies.

If you have any questions, please contact this office.

Sincerely,



Zanna Brinkman  
Director  
Reclamation Division

Enclosures

cc via email only w/ enclosures: Desirae Zaste (desirae@braatenlawfirm.com)  
Derrick Braaten (derrick@braatenlawfirm.com)

# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
North Dakota Ecological Services  
3425 Miriam Avenue  
Bismarck, North Dakota 58501



IN REPLY REFER TO:  
Revision 12 to NACC-  
1302  
Coyote Creek Mine

July 22, 2022

Ms. Zanna Brinkman  
Director, Reclamation Division  
North Dakota Public Service Commission  
600 East Boulevard, Department 408  
Bismarck, North Dakota 58505-0480

Dear Ms. Brinkman:

This letter is in response to the notice of Receipt of Revision Application dated July 6, 2022 for comments regarding the revision of permit NACC-1302 for the Coyote Creek Mine located near Beulah, North Dakota.

The Threatened and Endangered Species list for Mercer County, North Dakota can be generated by using the IPAC tool from the US Fish & Wildlife Service (FWS). The current listings include: Endangered; Whooping crane, Pallid sturgeon, Threatened; Piping plover and its critical habitat, Rufus red Knot, Northern long-eared bat and Dakota Skipper. The FWS does not concur on "No Effect" determinations for species, but ask that documentation be placed in your administrative record for those species.

New populations of Dakota skippers have been observed in Oliver County during the past two flight periods. Information defining suitable habitat for Dakota skippers is included in the 2022 Dakota skipper Survey Protocol. The United States Fish and Wildlife Service (FWS) recommends that habitat surveys be conducted. We recommend areas determined to be suitable habitat for Dakota Skipper be surveyed by permitted surveyors for Dakota skipper occupancy, prior to surface disturbance in the areas of concern covered by Revision 12 of Permit NACC-1302.

The 2020 White Nose Syndrome distribution map now includes most of counties in North Dakota. We encourage that if any tree removal is necessary by the project that such tree removal occur outside the northern long-eared bat active season. The active season in North Dakota is likely mid-April through mid-October and if tree removal cannot be avoided during that time we encourage that trees not be removed during the maternity season for northern long-eared bats, particularly June and July.

Ms. Brinkman, Coyote Creek Mining Permit Revision 12

2

If changes are made in the project plans or operating criteria, or if additional information becomes available, the FWS should be informed so that the above comments can be reconsidered.

The FWS appreciates the opportunity to provide comments to the PSC and North American Coal Corporation. If you have any questions on these comments, please contact Jerry Reinisch of my staff at 701-425-2133 or me at 701-319-0127

Sincerely,

**DREW  
BECKER**

Digitally signed by DREW  
BECKER  
Date: 2022.07.25 06:42:39  
-05'00'

Drew N. Becker  
ND Ecological Services Office Supervisor

cc: Greg Link, North Dakota State Game and Fish Department  
Sarah Flath, Coteau Properties, North American Coal Corporation

July 21, 2022

Zanna Brinkman  
Director  
Reclamation Division  
Public Service Commission  
600 East Boulevard Avenue  
Bismarck, ND 58505

RE: Revision 12 to Permit NACC-1302

Dear Zanna Brinkman:

We have reviewed Coyote Creek Mining Company's application for revision number 12 to Surface Coal Mining Permit NACC-1302. We have no objection to the revision which adds design information for three sedimentation ponds (P24-05, P24-06, and P25-03); modifies post-mine topography in Sections 6 and 7, T142N, R88W, and Sections 1, T142N, R89W; and updates or modifies other sections of the permit.

At this time, the department has no further comments regarding this revision.

Sincerely,



Dallas Grossman  
Environmental Engineer  
Division of Water Quality

NORTH  
**Dakota** | Water Resources  
Be Legendary.

August 22, 2022

Zanna Brinkman  
Director  
Public Service Commission  
Inside Mail

Dear Ms. Brinkman:

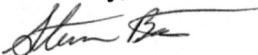
This is in response to your request for a review of the environmental impacts associated the Revision No. 12 to Surface Coal Mining Permit. NACC-1302 at the Coyote Creek Mine.

The proposed project has been reviewed by Department of Water Resources, and the following comments are provided:

- There are no floodplains identified or mapped where the proposed project is to take place. North Dakota has no formal "permitting" authority as a state entity in National Flood Insurance Program-identified floodplains. Floodplain development permitting is completed by the local unit of government with zoning authority at the proposed project location. Please work closely with Mercer County's Floodplain Administrator for permitting purposes.
- Coyote Creek Mining Company proposes to modify a portion of the post-mining topography at Coyote Creek Mine. North Dakota Century Code § 61-32-03 requires that a drainage permit be secured from the Department of Water Resources (DWR) prior to draining a pond, slough, lake, or sheetwater, or any series thereof, which has a drainage area of 80 acres or more. However, subsection 2 of North Dakota Administrative Code § 89-02-01-05 allows an exemption to the drainage permitting requirement for surface mining projects under direct and comprehensive supervision of the public service commission. Therefore, a drainage permit will not be required, but the public service commission must notify the DWR of any proposed drainage projects during planning stages.
- In accordance with North Dakota Century Code §61-16.1-38, any new construction or construction modifications on water storage impoundments, including stock ponds or sedimentation ponds, may require a construction permit from the Department of Water Resources (DWR) based on the ponds' storage volume and hazard classification. Similarly, if any stock ponds or sedimentation ponds are to be removed, we request that the DWR Regulatory Division be notified. Please contact the DWR Regulatory Division at 701-328-4956 if you have any questions.

Thank you for the opportunity to provide review comments. Should you have further questions, please contact me at 701-328-4970 or [stevebest@nd.gov](mailto:stevebest@nd.gov).

Sincerely,



Steven Best  
Planner III

SB:dm/1570

August 26, 2022

Steve Kahl  
Public Service Commission  
600 E. Boulevard Ave., Dept 408  
Bismarck, ND 58505-0480

Re: Coyote Creek Mining Company Surface Coal Mining Permit No. NACC-1302

Dear Mr. Kahl,

The North Dakota Parks and Recreation Department (NDPRD) has reviewed the above-referenced Coyote Creek Mining Company Surface Coal Mining Permit No. NACC-1302, Mercer County, North Dakota.

NDPRD's scope of authority and expertise covers properties that NDPRD owns, leases, or manages; properties protected under Section 6(f) of the Land and Water Conservation Fund (LWCF); rare plants, and ecological communities established through the Natural Heritage Program.

The project does not appear to affect properties that NDPRD owns, leases, or manages.

The project does not appear to affect any properties protected under Section 6(f) of the LWCF.

A North Dakota Natural Heritage biological conservation database query determines if any current or historical plant or animal species of concern or other significant ecological communities are known to occur within an approximate one-mile radius of the project area. Based on this review, we have no known plant and animal species of concern or significant ecological communities documented within or immediately adjacent to the project site.

We appreciate your commitment to rare plant, animal, and ecological community conservation, management, and inter-agency cooperation to date. For additional information, please get in touch with Kathy Duttenhefner at 701-328-5370, 701-220-3377 (cell), or [kgduttenhefner@nd.gov](mailto:kgduttenhefner@nd.gov).

Thank you for the opportunity to comment on the proposed project.

Sincerely,



Kathy Duttenhefner, Chief Natural Resources Division



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

Julie Fedorchak  
Randy Christmann  
Sheri Haugen-Hoffart

600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480  
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ND Toll Free: 1-877-245-6685  
Fax: 701-328-2410  
TDD: 800-366-6888 or 711

*sent via email only*

May 25, 2022

Mr. Jeremy Eckroth  
Environmental Manager  
Coyote Creek Mining Company, LLC  
6502 17th St. SW  
Zap, ND 58580  
[Jeremy.Eckroth@nacoal.com](mailto:Jeremy.Eckroth@nacoal.com)

Dear Mr. Eckroth:

The Reclamation Division has conducted a midterm review of Permit NACC-1302 for the Coyote Creek Mine as required by NDAC 69-05.2-11-01(1). We identified the following items during our review that require updating or modification as appropriate in a permit revision that should be submitted by **July 25, 2022**. The revision submittal will be not subject to the public notice requirements unless significant changes requiring public notice are included in the corresponding revision application.

### **General**

1. Several blue highlighted and underlined references to other sections of the permit appears to be hyperlinks, but no link was established when these blue highlighted and underlined references were checked. It is not clear if these are intended to be hyperlinks or are intended to only reference section of the permit. Please review the intent of the blue highlighted and underlined text references in the permit and update if necessary. (JAR)

### **Table of Contents**

2. Please update the Printable Table of Contents to include Sections 2.2.1.2 and 4.2.4. Please update page 3 of 9 for Section 2.3.3 to be properly indented independently. Please update pages 8 and 9 to include the full title of "Section 3.3.15 Design of Impoundment P10-01 and D10-01" and "Section 3.3.24 Design of Impoundment P06-01 and D06-03," respectively. (BSM)

### **Section 1.2 – Legal Information**

3. The legend description in Section 1.2.6.1 (Proposed Section Line and Road Closures and Setback Waivers Map) has been partially cut off from view. Please adjust the legend position so all of the descriptions are viewable. Also, no symbol and description are provided for "Eligible Cultural Resources Site" areas shaded in yellow within the legend. Please include the identification symbol and description within the legend. (BSM)

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

4. Please update Section 1.3.5 (Other Licenses and Permits) as required by NDAC 69-05.2-06-04 if there are any changes to the listings since the most recent update with Revision No. 11. (JAR/GAW)
5. The ND DEQ 918 E. Divide Ave address is outdated within Section 1.3.5 (Other Licenses and Permits). Please update the address for the ND DEQ to 4201 Normandy Street, Bismarck, ND 58503-1324. (BSM)

**Section 1.5 – Identification of Interests and Rights of Entry**

6. Please update Section 1.5.1 – Permit Area Surface and Coal Interests and Section 1.5.2 – Adjacent Surface and Coal Ownership and Leasehold Information for any changes since the approval of Revision No. 11. Any updates to these sections should also be reflected on the Surface and Coal Ownership Map in Section 1.5.3 as required by NDCC 38-14.1-14(1)(c) and NDAC 69-05.2-06-01(1). (JAR)

**Section 2.5 Soil Resources**

7. Section 2.5.8.1 (Deep Lift Soil Survey Map - dated 12/29/16) approved with Revision No. 5 to Permit NACC-1302 erroneously indicates salvage depths greater than 120 inches in some delineations. Please revise the Deep Lift Soil Survey Map so the available other suitable strata is limited to depths of 120 inches or less. (MLJ)
8. The Prime Farmland acreage total (226.21 acres) within NACC-1302 shown in Section 2.5.5.1 – Prime Acres by Landowner appears to be approximately 30 acres less than what is shown in Section 2.5.6 (Soil Survey and Prime Farmland Map). The cause of the acreage discrepancy may be due to the prime farmland hatched polygon located in the N½ of Section 30. It appears that the south portion of the polygon is not closed with a polyline. The non-closed portion accounts for the approximate 30 acres discrepancy. Please review and/or revise this acreage discrepancy. (MLJ)

**Section 2.7 – Fish and Wildlife Resources**

9. Please review the Wildlife Protection, Enhancement and Management Plan, which begins on page 2 of Section 2.7.3, and update or modify as necessary to ensure the information provided is accurate. The Wildlife Protection, Enhancement and Management Plan states that winter feeding and artificial habitats will be installed. Perhaps these narratives should be updated, and the Northern Long Eared Bat narrative should be updated to mention that USFWS is in the process of classifying this species as Endangered which would eliminate incidental take through the 4(d) rule. (GAW)
10. Please review the Wildlife Monitoring Plan discussion in Section 2.7.4 and update, so the information provided is current and up to date. The Threatened and Endangered Species discussion that begins on page 3 of Section 2.7.4 and Table 1 incorrectly indicates that the Dakota skipper is not listed in Mercer County. Section 2.7.4 should state that USFWS' IPaC site will be periodically reviewed to ensure appropriate precautions are being applied to all listed and proposed species and designated critical habitats. (GAW)

**Section 3.1 – Operations - General**

11. Please review the subsoil compaction discussions on pages 2 and 3 of the Soils Handling Narrative, Section 3.1.1.1, to clarify if any compaction testing has been conducted or if Coyote Creek's compaction testing plans have changed because of NDSU's recent research study of mined lands. The permit should clarify if any vegetative production testing has been completed to identify any low producing areas associated with compaction issues and describe any practices applied to alleviating subsoil compaction after SPGM respread. (GAW)
12. Please review the Coal Production Schedule, Section 3.1.1.4, and update the anticipated coal production amounts if production changes are anticipated through the permit term. It appears the Coal Production Schedule was updated to include actual tons of coal produced from 2016 through 2019. Please provide actual tons of coal produced in 2020 and 2021 if this Schedule is to be periodically updated to include actual amounts mined. (GAW)
13. Please review the equipment listed in Section 3.1.1.5, List of Equipment, and update if necessary. (SMN)
14. Please update the Pit Layout and Facilities Map in Section 3.1.3 to incorporate changes/additions since Revision 11 with regards to stockpiles, haul roads, diversions, sedimentation ponds, proposed pit layout and mining facilities, etc. (JAR)

**Section 3.2 – Transportation Facilities**

15. If CCMC utilizes the temporary farmer access road (18<sup>th</sup> St SW) that connects the Voigt ranch with County Road 13 for coal-mining related transportation, please update Section 3.2 - Transportation Facilities Narrative accordingly. (JAR)

**Section 3.3 – Surface Water Management**

16. Please review the Pond Dewater Procedures narrative that begins on page 4 of Section 3.3.1, Surface Water Management Plan, and update it to address the total suspended solids (TSS) and Iron issues that have been preventing timely sediment pond discharges. The Reclamation Division encourages CCMC to develop an alternative dewatering plan that includes methods that will enable CCMC to maintain sediment pond water elevation at or below permanent pool elevation (PPE) in an instances where TSS and Iron are above discharge limits, as has been the case with sediment pond P31-01 and P06-03. This may include pumping water that cannot be discharged to a pit or a spoil pond and/or constructing sumps in drainages above problematic ponds to create additional storage space for runoff. (GAW)
17. Please depict the field engineered diversion southeast of sediment pond P06-03 that transports runoff into pond P06-03 on the Surface Water Management Plan Map, Section 3.3.2. (GAW)
18. A sump is depicted and labeled adjacent to the west side of sediment pond P06-03. Please discuss the purpose of this water management feature in the surface water management plan, Section 3.3.1, or in the design of sediment pond P06-03, Section 3.3.19. (GAW)

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

19. Please clarify if Casey Voigt has been consulted on selecting and establishing management practices for reference areas on undisturbed native grasslands that will be used to demonstrate reclamation success on reclaimed native grasslands that Mr. Voigt owns. Please provide updated information as required by Order Provision No. 2 of the April 14, 2013, Findings of Fact, Conclusion of Law and Order for Permit NACC-1302 (Case No. RC-13-50). The proposed reference areas need to be formally approved for use as native grassland reference areas. Please provide recent similarity index ratings of the proposed native grassland reference areas and arrange for the areas to be inspected and approved. (GAW)
20. Please review the location of reclaimed wetland CW-07-01 to ensure the site continues to be the preferred location for a replacement wetland. (GAW)
21. Please review the location of reclaimed woodland W36-03 to ensure the site is the preferred location for a small woodland. (GAW)

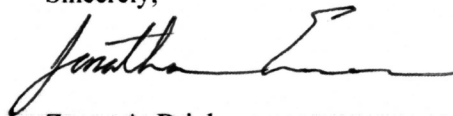
**Section 4.5 – Post-Mining Stockponds**

22. Please consider providing detailed design plans for stockpond SP25-02 since it appears the entire watershed could be reclaimed during the existing term of the permit. (BSM)

The nine standard permit conditions and two special conditions for Permit NACC-1302 remain in effect. The Certificate of Liability Insurance on file for Coyote Creek Mine expires on February 1, 2023. The business entity/compliance information referenced in Section 1.3.1, 1.3.2, 1.3.3, and 1.3.4 was last updated in the stand-alone Consolidated Legal Information Report effective November 12, 2021.

If you have any questions, please contact this office.

Sincerely,



*for* Zanna A. Brinkman  
Director  
Reclamation Division

cc via email only: Derrick Braaten (derrick@braatenlawfirm.com)