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<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 2:07 PM CST
<b>Date/Time Accepted</b>	7/19/2023 10:28 AM CST
<b>Accepted Comments</b>	
<b>Filing Type</b>	Exhibit
<b>Filing Description</b>	CR Exhibit 33 – October 12, 2022 Hearing Transcript (Full)
<b>Activity Requested</b>	EFileAndServe
<b>Filed By</b>	Pamela Thompson
<b>Filing Attorney</b>	John Schuh

Document Details	
<b>Lead Document</b>	CR Exhibit 33 – October 12 2022 Hearing Transcript (Full).pdf
<b>Lead Document Page Count</b>	139
<b>File Copy</b>	<a href="#">View Document</a>

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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 --

**A P P E A R A N C E S**

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MR. JOHN M. SCHUH  
Special Assistant Attorney General  
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  
VOIGT.

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Bismarck, North Dakota 58502-2798

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.

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

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

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

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

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.

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

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

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.

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 unaccessible 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.

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.

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

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

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.

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.

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.)

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.

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

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

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,

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.

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.

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

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

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.

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

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

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

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

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

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

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

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 --

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

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

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.

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

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

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

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.

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

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

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 --

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

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?

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

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

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 numerously noted that this frills --

23 MR. BRAATEN: Yeah.

24 MR. VOIGT: -- which is erosion, so  
25 there's signs of erosion in that area.

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

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

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?

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.

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

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

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

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

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

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,

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

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

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

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 --

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

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

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.

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

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

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

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

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

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

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

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.

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

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 resspreading 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

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

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

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

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

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.

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.

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

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,

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

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.

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

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,

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.

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

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

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

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

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

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

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

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?

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

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

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

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

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

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

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.

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

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.

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

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

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

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

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.

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

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.

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

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

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

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

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

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

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

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

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.

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

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.

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

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

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

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

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.

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.

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

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

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

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

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.

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

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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CERTIFICATE OF COURT REPORTER

I, Denise M. Andahl, a Registered Professional Reporter,

DO HEREBY CERTIFY that I transcribed the foregoing tape recording had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of the audible portions of the audiotape recording.

Dated at Bismarck, North Dakota, this 14th day of July, 2023.

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Denise M. Andahl  
Registered Professional Reporter