

**Thompson, Pamela J.**

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**Sent:** Wednesday, July 19, 2023 10:33 AM  
**To:** Thompson, Pamela J.  
**Subject:** Filing Accepted for Case: 08-2023-CV-01338; Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.; Envelope Number: 5273300

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## Filing Accepted

Envelope Number: 5273300  
Case Number: 08-2023-CV-01338  
Case Style: Casey Voigt, et al. vs. North Dakota  
Public Service Commission, et al.

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Filing Details	
<b>Court</b>	Burleigh County
<b>Case Number</b>	08-2023-CV-01338
<b>Case Style</b>	Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.
<b>Date/Time Submitted</b>	7/18/2023 2:39 PM CST
<b>Date/Time Accepted</b>	7/19/2023 10:32 AM CST
<b>Accepted Comments</b>	
<b>Filing Type</b>	Exhibit
<b>Filing Description</b>	CR Exhibit 64 - Proposed Findings of Fact, Conclusions of Law and Order
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<b>Filed By</b>	Pamela Thompson
<b>Filing Attorney</b>	John Schuh

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October 26, 2022

***Via Electronic Mail & U.S. Mail***

Mr. Steve Kahl  
North Dakota Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480  
[ndpsc@nd.gov](mailto:ndpsc@nd.gov)

In re: Coyote Creek Mining Company, L.L.C. Application  
Revision No. 12 (Permit NACC-1302)  
Case No. RC-22-233

Dear Mr. Kahl:

Enclosed for filing please find Coyote Creek Mining Company, L.L.C.'s Proposed Findings of Fact, Conclusions of Law and Order, and Certificate of Service.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,



Wade C. Mann

WCM/lh  
Enc.

cc: Derrick Braaten (via email & U.S. Mail)  
John M. Schuh (via email & U.S. Mail)  
Hope L. Hogan (via email & U.S. Mail)  
Chris Friez (via email)

41 RC-22-233 Filed 10/26/2022 Pages: 8  
Proposed Findings of Fact, Conclusions of Law and Order  
Coyote Creek Mining Company, L.L.C.  
Wade Mann, Crowley Fleck PLLP

BILLINGS BISMARCK BOZEMAN BUTTE CASPER CHEYENNE HELENA KALISPELL MISSOULA SHERIDAN WILLISTON

**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

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

Case No. RC-22-233

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**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
DATED OCTOBER \_\_, 2022**

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**Appearances**

Derrick Braaten, Attorney at Law, Braaten Law Firm, 109 North Fourth Street, Suite 100, Bismarck, North Dakota 58501, on behalf of Casey Voigt and Julie Voigt.

Wade Mann, Attorney at Law, Crowley Fleck PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58501 on behalf of Coyote Creek Mining Company, L.L.C.

John M. Schuh, Special Assistant Attorney General, 600 E. Boulevard Avenue, 12<sup>th</sup> Floor, Dept. 408, Bismarck, North Dakota 58505, on behalf of the North Dakota Public Service Commission Advocacy Staff.

Hope L. Hogan, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14<sup>th</sup> Street, Suite 303, Bismarck, ND 58503, as Substantive Hearing Officer.

**Preliminary Statement**

On March 17, 2022, Coyote Creek Mining Company, L.L.C. (“CCMC”) filed an Application for Revision of Permit to Engage in Surface Coal Mining and Reclamation Operations (“Revision Application”) to add sediment pond designs, update the reclamation and variance map and modify the post mine topo in Sections 1, 6 and 7. The revision is identified as Revision No. 12 and the application was assigned Case No. RC-22-233.

On July 6, 2022, the Commission issued a Notice of Receipt of Revision Application summarizing the purpose of the application and giving notice that anyone may submit written comments or objections on the proposed permit revision and request an informal conference with the Commission and the applicant on the Revision Application provided the written comments, objections, or requests for informal conference must be made by August 29, 2022.

On August 29, 2022, counsel for Casey and Julie Voigt (“Voigts”) filed Comments of Casey Voigt and Julie Voigt, Objection to Mine Plan, and Request for Informal Hearing (“Comments”).

The informal conference was held as scheduled, commencing at 9:30 a.m. CDT on October 12, 2022.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all the evidence presented, the undersigned Administrative Law Judge makes the following:

### **Findings of Fact**

1. On October 22, 2014, the Commission issued Surface Coal Mining Permit No. NACC-1302 (“Permit NACC-1302”) to allow CCMC to conduct surface coal mining and reclamation operations at the Coyote Creek Mine, to supply coal to the Coyote Power Station.
2. In May of 2019, CCMC filed Renewal No. 1 to Permit NACC-1302, seeking to allow CCMC to continue to operate within the existing permit area until October 22, 2024 and Revision No. 9 to Permit NACC-1302, identifying the next five-year coal removal subarea, modifying the post-mining topography and updating the mining and reclamation plans prior to permit renewal.
3. The Voigts filed comments and objections to the Renewal Application and the Revision Application and requested an informal hearing on these applications. The comments covered seven topics but were eventually narrowed to five issues to be addressed at the informal conference on October 8, 2019, including 1) Access, 2) Dust, 3) Alluvial Valley Floors, 4) Sediment, and 5) Reclamation.
4. On October 21, 2019, the Commission issued its Renewal of Permit to Engage in Surface Coal Mining and Reclamation Operations allowing CCMC to continue to operate under approved mining and reclamation plans for the permit until October 21, 2024.
5. On November 20, 2019, the Voigts requested a Formal Hearing. On December 13, 2019, they filed Requested Supplemental Information Regarding Formal Hearing voicing five areas of concern which were the same five issues addressed at the October 8, 2019 informal conference including access and dust.
6. The Commission had previously addressed the same access issue in Case No. RC-13-850 and the dust issue in Case No. RC-14-846 and concluded in both cases that they do not have jurisdiction over either of these issues.
7. On February 7, 2020, the Commission issued its Findings of Fact, Conclusions of Law and Order in Case Nos. RC-19-189 and RC-19-190. In its order, the Commission again concluded in these cases that it did not have jurisdiction over the access and dust issues. The Commission also concluded that the Commission does not have jurisdiction over the Voigt/CCMC coal or surface leasing terms, conditions, practices, or private agreements and negotiations.

8. On August 29, 2022, the Voigts filed Comments specifically objecting to two of the proposed revisions and making general complaints about dust and compensation under their coal lease. The specific revision complaints related to 1) the projected respread thickness in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 25, and 2) the timeframes for conducting post-disturbance seeding on areas to be seeded to native grasslands.

### **Dust and Access**

9. The Voigts began the informal conference by presenting a video and photos of dust near their ranch and areas where they claim to have limited access. The dust and access video and photos consist primarily of images from 2016, 2017, 2018 and 2019 that were previously presented to the Commission in Case Nos. RC-19-189 and RC-19-190 after which the Commission again concluded that they did not have jurisdiction over either issue.

10. The access issue has previously been addressed on multiple occasions by the Commission. The previous access concerns related to matters that are not within the jurisdiction of the Commission and have been resolved by previous orders of the Commission. The video and general access complaints presented by the Voigts at the informal conference did not demonstrate the existence of any new access related issue that would necessitate any action by the Commission.

11. The allegations of dust at the mine and the Voigts' concerns about dust have likewise been previously addressed at length by the Commission in Case Nos. RC-14-846, RC-19-189 and RC-19-190. The Commission's previous extensive findings detail the history of CCMC's air control permit and fugitive dust control plan and the Commission's lack of jurisdiction over the plan. The general dust complaints, supported largely by images presented at past hearings, do not demonstrate the existence of any new dust related issues within the Commission's jurisdiction that would necessitate any action by the Commission.

### **Respread Thickness**

12. The Voigts objected to CCMC's revisions made to Sections 2.5.4 and 2.5.7 to NACC-1302 and expressed concern about the projected post-mining respread thickness.

13. Reclamation staff Monty Johnson prepared a memorandum on the issue and presented the findings at the informal conference. Mr. Johnson confirmed that CCMC's revisions to Sections 2.5.4 and 2.5.7 were appropriate. The memo provided in part that CCMC "is not proposing to respread subsoil and topsoil contrary to the table in NDAC 69-05.2-15-04(4)."

14. CCMC explained that the revisions were simply correcting an error in the initial mapping in the permit application. Mr. Johnson confirmed this and noted in his memorandum that "[t]he only item that Coyote Creek has made changes to in Revision 12

regarding SPGM respread are the projected respread depths in the SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> and SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 25. Just because Coyote Creek has projected a certain SPGM respread thickness does not mean that the actual required respread thickness will be the same as projected. The actual SPGM respread thickness will be determined based on graded soil properties in accordance with NDAC 69-05.2-15-04(4) and Policy Memorandum No. 17 To Mine Operators.”

15. The Voigts’ objections appear to be based in part on their misunderstanding of the application of the Suitable Plant Growth Material (“SPGM”) projections and also in part on their interpretation of the Voigt/CCMC coal lease. Mr. Johnson confirmed the revisions are in accordance with Commission rules and to the extent the Voigts are raising complaints based on their lease, the Commission has previously explained the Commission does not have jurisdiction over the Voigt/CCMC coal or surface leasing terms, conditions, practices, or private agreements and negotiations.

### **Reseeding and Compaction**

16. The Voigts raised concerns about the elimination of deadlines for reseeding lands to native grasslands and about soil compaction. They also expressed a preference for including forbs in preliminary seed mix.

17. CCMC indicated that it is not opposed to developing a plan with appropriate timeframes for seeding the variance areas to the approved post mine land uses and is willing to work with Reclamation staff on appropriate seed mixes but explained that requests such as inclusion of forbs in the preliminary mix is impractical and can limit the management of annual weeds.

18. Guy Welch testified on behalf of Reclamation Division staff and explained that a key component to analyzing variance requests is to determine whether the variance is going to delay bond release. Mr. Welch noted that CCMC’s revisions will not delay bond release.

19. Mr. Welch noted that there were no particular areas of concern and that CCMC had no violations relating to revegetation. Mr. Welch indicated that he would like to have some clarification with respect to the revegetation timeframes. That clarification can be handled through the next round of technical deficiencies.

20. In response to the Voigts concerns regarding seed rates, Mr. Welch noted that CCMC doubles or triples the NRCS recommended rates for native grasses.

21. Mr. Welch explained that there is no specific standard for compaction. CCMC complies with all applicable rules and permit conditions impacting compaction and as a general practice rips or scarifies below haul roads and steep slopes to address compaction.

From the foregoing Findings of Fact, the Commission now makes its:

### **Conclusions of Law**

1. That the Commission has jurisdiction over CCMC's mining and reclamation operations in North Dakota, including Permit No. NACC-1302 and Revision No. 12 thereto.
2. That CCMC's Revision No. 12 application to surface coal mining Permit NACC-1302 meets all permit revision standards under North Dakota Century Code Chapter 38-14.1 and North Dakota Administrative Code, Article 69-05.2.
3. That CCMC has complied with North Dakota's mining law and mining regulations in its submittal of Revision No. 12 and that no basis has been established for the Commission to deny or delay revision of Permit NACC-1302 or to seek further amendments to the revision to the permit with respect to the comments and issues raised by the Voigts.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

### **Order**

The Commission orders:

1. That Revision No. 12 as submitted by CCMC, with respect to the comments and issues raised by the Voigts, fulfills the requirements of North Dakota's mining law and mining regulations.
2. That Revision No. 12 be approved as scheduled to allow CCMC to continue to engage in surface coal mining and reclamation operations within the permit area until October 22, 2024.

PUBLIC SERVICE COMMISSION

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Hope L. Hogan  
Substantive Administrative Law Judge

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

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

Case No. RC-22-233

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**CERTIFICATE OF SERVICE**

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[¶1] I hereby certify that a true and correct copy of the foregoing document:

**1. Coyote Creek Mining Company, L.L.C.’s Proposed Findings of Fact,  
Conclusions of Law and Order**

was on the 26<sup>th</sup> day of October, 2022, filed with the North Dakota Public Service Commission via electronic mail ([ndpsc@nd.gov](mailto:ndpsc@nd.gov)) and U.S. Mail, and that a true and correct copy of the same was served via electronic mail and U.S. Mail, postage prepaid, upon the following:

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Dated this 26<sup>th</sup> day of October, 2022.

*/s/ Wade C. Mann*

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