

December 12, 2023

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

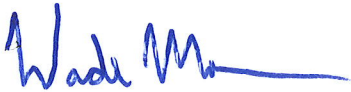
In re: Casey and Julie Voigt v. Coyote Creek Mining Company, L.L.C.
Answer to Complaint
OAH File No. 20230391
PSC Case No. RC-23-348

Dear Mr. Kahl:

Enclosed for filing please find Coyote Creek Mining Company, L.L.C.'s Answer to Complaint in the above-referenced matter.

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 Schuh (via email & U.S. Mail)
Hope L. Hogan (via email & U.S. Mail)
Chris Friez (via email)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Casey and Julie Voigt,
Complainants,

Case No. RC-23-348

vs.

Coyote Creek Mining Company, L.L.C.,
Respondent.

**COYOTE CREEK MINING COMPANY, L.L.C.'S
ANSWER TO COMPLAINT**

[¶1] Coyote Creek Mining Company, L.L.C. (“CCMC”), for its answer to the Complainant Casey and Julie Voigts’ (“Voigts”) Complaint in the captioned matter, states as follows:

1. Each and every matter, thing and allegation contained in the Complaint is denied except as hereafter specifically admitted, qualified or explained.
2. With respect to the allegations in paragraph 1, CCMC admits that it is the owner and operator of the Coyote Creek Mine and admits the general allegations describing the mine in this paragraph. CCMC denies that the allegations accurately reflect the current corporate structure.
3. With respect to the allegations in paragraph 2, CCMC admits.
4. With respect to the allegations in paragraph 3, CCMC admits that the Voigts own the surface interest within a portion of the mine permit boundary and that they own a house in Section 31, Township 143 North, Range 88 West, Mercer County, North Dakota, and that they conduct an active cow-calf ranching operation upon the surface of some lands within the mine permit boundary.

5. With respect to the allegations in paragraph 4, the Voigts make a legal conclusion to which no response is required.
6. With respect to the allegations in paragraph 5, CCMC admits that the Voigts entered into a Surface and Coal Lease Agreement with North American Coal Royalty Company. The terms and provisions of the lease speak for themselves. CCMC denies the Voigts' characterization of the terms of the lease. CCMC admits that the Voigts signed a Landowner Post-Mining Preference Statement on or about October 11, 2013. The Preference Statement is inconsistent with the rights that the Voigts expressly granted to the Lessee in the Surface and Coal Lease Agreement. To the extent any further response is required, CCMC denies.
7. With respect to the allegations in paragraphs 6 through 8, CCMC admits.
8. With respect to the allegations in paragraph 9, CCMC admits that the Voigts filed a Notice of Appeal and Specification of Errors regarding the referenced grade approvals but lacks information sufficient to form a belief as to any service upon the North Dakota Attorney General and therefore denies those allegations.
9. With respect to the allegations in paragraph 10, CCMC admits.
10. With respect to the allegations in paragraph 11, CCMC admits that the Voigts filed a Notice of Appeal and Specification of Errors regarding the referenced grade approvals but lacks information sufficient to form a belief as to any service upon the North Dakota Attorney General and therefore denies those allegations.
11. With respect to the allegations in paragraphs 12 through 16, CCMC admits.
12. With respect to the allegations in paragraph 17, CCMC admits that the Voigts filed a Notice of Appeal and Specification of Errors regarding the referenced grade approvals

- but lacks information sufficient to form a belief as to any service upon the PSC or the North Dakota Attorney General and therefore denies those allegations.
13. With respect to the allegations in paragraph 18, CCMC admits.
 14. With respect to the allegations in paragraph 19, the language of Revision 12 to NACC-1302, including Section 2.5.4, speaks for itself.
 15. With respect to the allegations in paragraph 20, CCMC admits that Monty Johnson, Environmental Scientist with the Reclamation Division of the PSC, testified at the informal conference. Monty Johnson's testimony at that hearing speaks for itself. CCMC denies the Voigts' inferences and characterizations of Mr. Johnson's testimony at that hearing.
 16. With respect to the allegations in paragraph 21, CCMC denies that any policy or practice of the PSC relating to the respread of Suitable Plant Growth Material does not comply with or violates the requirements of N.D.A.C. § 69-05.2-15-04.
 17. With respect to paragraph 22, CCMC lacks information sufficient to form a belief as to what the PSC's "practice" entails or what it is allegedly based upon and therefore denies the allegations.
 18. Paragraph 23 makes incorrect legal conclusions to which no response is required. To the extent that any factual allegations are made in this paragraph, they are denied.
 19. With respect to paragraphs 24 through 27, the allegations are denied.
 20. Paragraph 28 makes an incorrect legal conclusion to which no response is required.
 21. With respect to the allegations in paragraph 29, CCMC lacks information sufficient to form a belief as to the allegations in this paragraph and therefore they are denied. To the extent that any of the allegations in this paragraph can be interpreted to allege or

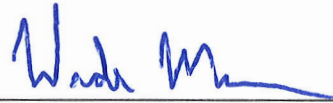
- infer that CCMC has not or will not comply with the requirements of relevant regulations or the terms of the Surface and Coal Lease Agreement, they are denied.
22. With respect to the allegations in paragraph 30, CCMC admits that the Voigts dispute the compensation they are entitled to for loss of production under the terms of the Surface and Coal Use Agreement. CCMC denies that there has been any downward adjustment of reclamation standards, including soil respread depths. CCMC lacks information sufficient to form a belief as to the remaining allegations in the paragraph and they are denied.
 23. CCMC denies that the Voigts are entitled to any of the relief requested in the Prayer for Relief.
 24. CCMC affirmatively alleges that the Voigts' Complaint fails to state a claim upon which relief can be granted.
 25. CCMC affirmatively alleges that the Voigts' claims are barred by the doctrine of waiver.
 26. CCMC affirmatively alleges that the Voigts' claims are barred by the doctrines of res judicata and collateral estoppel.
 27. CCMC affirmatively alleges that the Voigts failed to name the North Dakota Public Service Commission as a necessary party.
 28. CCMC affirmatively alleges that the Public Service Commission's jurisdiction is limited to whether CCMC has complied with applicable statutes, regulations, and/or existing permits and existing revisions to these permits. Interpretation or enforcement of the terms of the Surface and Coal Lease Agreement between the parties is outside the scope of that jurisdiction.

29. CCMC affirmatively alleges that the claims and requested relief related to future actions of CCMC are not ripe and require an impermissible advisory opinion of the Public Service Commission.
30. CCMC requests that the PSC grant CCMC an award of attorney's fees and costs under N.D.C.C. § 38-14.1-36 and N.D.A.C. § 69-05.2-01-07.

[¶] WHEREFORE, CCMC requests that the Voigts' Complaint be dismissed on the merits and that it be granted such other relief as the Public Service Commission deems just, equitable and appropriate.

DATED this 12th day of December, 2023.

By: _____



WADE C. MANN (ND #05871)

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CROWLEY FLECK PLLP

Attorneys for Coyote Creek Mining Company, L.L.C.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of December, 2023, a true and correct copy of **COYOTE CREEK MINING COMPANY, L.L.C.'S ANSWER TO COMPLAINT** was served via electronic mail and U.S. Mail, postage prepaid, upon the following:

John Schuh
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WADE C. MANN