

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Christmann, Haugen-Hoffart, and Fedorchak
Steve Kahl, Executive Secretary
John Schuh, General Counsel

FROM: ^{JE} Jonathan Emmer and ^{MJ} Monty Johnson

DATE: February 13, 2024

SUBJECT: Formal Hearing Findings of Fact and Conclusions of Law and Order for Voigt
Formal Complaint, Case No. RC-23-348, Coyote Creek Mining Company, L.L.C.

On November 22, 2023, the Voigts filed a complaint claiming that Coyote Creek Mining Company's (CCMC) grade approvals COY-034, COY-035, COY-036, COY-037, COY-038, and COY-039 do not comply with and violate the requirements of N.D.A.C. 69-05.2-15-04. The complaint alleged there is no basis in the underlying surface mining laws to justify thinner respread depths where a truck shovel method of removing overburden has been used and that there is no basis for creating a method of calculating topsoil and subsoil respread depths shallower than N.D.A.C. dictates. The complaint asserted that any projected or actual topsoil and subsoil respread depths for properties owned by the Voigts should be set at forty-eight inches pursuant to N.D.A.C. 69-05.2-15-04(4)(a)(2) and the Voigt's coal lease. The complaint alleges the Commission has granted an exception by approving several grade approval requests that allow less than forty-eight inches of topsoil and subsoil.

On November 30, 2023, the Commission issued a Notice of Formal Hearing scheduling the Hearing for 9:00 a.m. CST on December 22, 2023, in the Public Service Commission Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota. The formal hearing was held as scheduled. The Voigts, CCMC, and Commission staff testified at the hearing. The proceeding remained open until January 19, 2024 to allow the Voigts and CCMC to submit written closing arguments and recommended orders.

The attached Findings of Fact, Conclusions of Law, and Order was prepared by staff. This order affirms grade approval requests COY-034, COY-035, COY-036, COY-037, COY-038, and COY-039 and dismisses the Voigts complaint filed on November 22, 2023. Attached is a motion to adopt the Findings of Fact and Conclusions of Law and Order.

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