

April 2, 2024

*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: Casey and Julie Voigt v. Coyote Creek Mining Company, L.L.C.  
OAH File No. 20230391  
PSC Case No. RC-23-348  
Our File No. 021919-000026

Dear Mr. Kahl:

Enclosed for filing please find Motion for Attorney's Fees Pursuant to N.D.C.C. § 38-14.1-36 and N.D.A.C. § 69-05.2-01-07, Affidavit of Wade C. Mann with attached Exhibit A, and Certificate of Service 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** )  
**v. Coyote Creek Mining Co., L.L.C.,** )  
**Complaint** )

**Case No. RC-23-348**  
**OAH File No. 20230391**

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**MOTION FOR ATTORNEY’S FEES PURSUANT TO N.D.C.C. § 38-14.1-36 AND  
N.D.A.C. § 69-05.2-01-07**

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[1.] Coyote Creek Mining Company, L.L.C. (“CCMC”) moves the Commission for an award of attorney’s fees and costs that it incurred in defending against Casey and Julie Voigt’s (“Voigts”) Complaint in Case No. RC-23-348. N.D.C.C. § 38-14.1-36; N.D.A.C. § 69-05.2-01-07. Redacted account statements evidencing the requested attorney’s fees are included in Exhibit A.

**INTRODUCTION**

[2.] The captioned case is the most recent of a lengthy series of filings by the Voigts against CCMC spanning nearly a decade. In this case, the Voigts accused CCMC of violating N.D.A.C. § 69-05.2-15-04 concerning grade approvals COY-034 through COY-039. In its February 14, 2024 Findings of Fact, Conclusions of Law, and Order (the “Order”), Docket No. 104, the Commission conclusively rejected the Voigts’ allegations.

[3.] It is unfortunate that CCMC must bring this motion, but the Voigts’ continued misuse of the Commission process has gone too far and CCMC cannot stand for the continued harassment that it brings. Consistent with their past practices, the Voigts’ objections in this case sought to have the Commission consider issues over which it has no jurisdiction, asked the Commission to engage in improper rulemaking, and lacked any factual or evidentiary basis. Both Commission staff and CCMC previously explained this issue to the Voigts on multiple occasions, but they still

insisted on going to the formal hearing. Valuable Commission time should be spent on issues of public importance, not the Voigts' latest set of meritless, contrived grievances designed to harass CCMC. Without consequences to their repeated bad faith actions and abuses of the administrative process, the Voigts will not stop. An award of attorney's fees and costs are appropriate.

### **BACKGROUND**

[4.] While this case alone warrants an award of fees, this motion has been nearly a decade in the making. The complete lack of legal and factual support for the Voigts' allegations in this proceeding must be taken in context of their prior abuses and past filings demonstrating a repeated pattern of an intent to harass through bad faith actions.

#### **I. The Voigts' history of vexatious conduct in judicial and administrative proceedings.**

[5.] The Voigts own certain surface and mineral estates in Mercer County, North Dakota. In 2010, the Voigts, with the assistance of counsel, leased approximately 3,508.96 acres of their property to an affiliate company of CCMC for coal mining. "The lease addresses CCMC's right to mine coal on the Voigts' property, compensation for damages to crops and livestock, and repair and replacement of roadways." Case No. RC-19-189, Docket No. 60, at ¶ 12; Case No. RC-19-190, Docket No. 68, at ¶ 12. Apparently regretting that they entered that lease, the Voigts have repeatedly used both administrative and judicial proceedings in bad faith to thwart the contractual rights for which CCMC bargained, and to which the Voigts agreed, under that lease.

#### **A. There was and is no alluvial valley floor.**

[6.] On November 1, 2013, CCMC submitted a permit application in Case No. RC-13-850, seeking a permit to engage in surface coal mining and reclamation operations on approximately 8,091.511 acres in Mercer County, North Dakota. Case No. RC-13-850, Docket No. 1. On November 24, 2014, Casey Voigt requested a formal hearing on the permit application. Case No.

RC-13-850, Docket No. 35. After three days of formal hearing, the Commission approved CCMC's application, subject to certain additional conditions, and issued permit NACC-1302. Case No. RC-13-850, Docket No. 125. In doing so, the Commission specifically noted that the Voigts' expert who testified concerning the property's characteristics and that an alluvial valley floor existed had "never visited the site." *Id.* at ¶ 58. The Voigts appealed the Commission's conclusions in RC-13-850 to the district court, alleging the Commission failed to properly identify and protect alleged alluvial valley floors. *Voigt v. N.D. Public Serv. Comm'n et al.*, Case No. 08-2015-CV-01056 (Burleigh County District Court). The district court affirmed the Commission's decision, concluding the weight of the evidence supported the Commission's decision that no alluvial valley floor existed. Case No. 08-2015-CV-01056, Docket No. 188. The Voigts further appealed, and the North Dakota Supreme Court again affirmed the Commission's conclusions. *Voigt v. N.D. Public Serv. Comm'n.*, 2017 ND 76, 892 N.W.2d 149. The courts have conclusively rejected this alluvial valley floor issue but, as discussed further below, the Voigts have in recent years repeatedly raised this alluvial valley floor issue with the Commission.

**B. There was and is no violation of the Clean Air Act.**

[7.] On December 17, 2014, CCMC filed an application in RC-14-846, where it sought to expand NACC-1302 to include acreage necessary for a haul road and a coal processing facility. Case No. RC-14-846, Docket No. 1. On May 11, 2015, Casey Voigt requested an informal conference on the application for the revision because the Voigts wanted to discuss dust. Case No. RC-14-846, Docket No. 15. After conducting the requested informal conference, the Commission approved the application. Case No. RC-14-846, Docket Nos. 56–58. The Voigts thereafter filed a federal lawsuit against CCMC, alleging violations of the Clean Air Act. The federal district court granted summary judgment in CCMC's favor. *Voigt v. Coyote Creek Mining*

*Co., LLC*, 329 F.Supp.3d. 735 (D.N.D. 2018). The Eighth Circuit Court of Appeals affirmed. *Voigt v. Coyote Creek Mining Co., LLC*, 999 F.3d 555 (8th Cir. 2021).

**C. There were and are no unlawful road closures.**

[8.] On December 16, 2015, CCMC petitioned the Mercer County Commission to temporarily close certain roads so as to allow CCMC to conduct surface mining operations. After four public hearings, the Mercer County Commission approved CCMC's petition on March 16, 2016. The Voigts appealed to the state district court, claiming that the determination did not comply with the law and unduly restricted access to their property. Case No. 29-2016-CV-00054 (Mercer County District Court). The state district court affirmed the Mercer County Commission's approval of CCMC's petition, concluding the Mercer County Commission complied with the law regarding road closures and "the Voigts will have readily accessible alternative routes of travel . . . [and] the road closure does not deprive them of access to their property." *Voigt v. Mercer Cnty. Bd. of Cnty. Commr's*, Case No. 29-2016-CV-00054, Docket No. 118. The Voigts further appealed to the North Dakota Supreme Court. *See Voigt v. Mercer Cnty. Bd. of Cnty. Commr's*, Case No. 20170025 (N.D. 2017). Despite already complying with what the law required, CCMC came to a further agreement with the Voigts to avoid yet another costly North Dakota Supreme Court proceeding. The Voigts chose to engage in a long-drawn-out process at the Mercer County Commission consisting of four public hearings, followed by a lawsuit, rather than asking for certain accommodations at the outset of the road closure issue.

**D. The Voigts sought to relitigate issues they already lost or that were already decided to be outside Commission's jurisdiction.**

[9.] In Case Nos. RC-19-189 and RC-19-190, CCMC sought a renewal and revision of NACC-1302. In response, the Voigts filed seven objections concerning road access, fugitive dust, alluvial valley floors, cultural resource sites, sedimentary buildup, CCMC's reclamation abilities, and

CCMC's financial incentives. In addition to those objections, the Voigts unsuccessfully moved to disqualify Crowley Fleck PLLP and the undersigned from representing CCMC. Case No. RC-19-189, Docket No. 26; Case No. RC-19-190, Docket No. 34.

[10.] The Voigts subsequently dropped many of these issues. However, they delayed doing so until after the Commission had published notice of the informal conference. Case No. RC-19-189, Docket No. 14; Case No. RC-19-190, Docket No. 19. As a result, those issues (which the Voigts tacitly admitted were frivolous by not pursuing them), were disseminated for public view. No reasonable explanation exists to assert those issues, have those issues published, and then withdraw those issues other than the Voigts intended to embarrass and harass CCMC.

[11.] The Commission held the informal conference requested by the Voigts on October 8, 2019. The Voigts, through their counsel, offered the testimony of three retained experts. After a five-hour hearing in which CCMC rebutted every objection and explained why the Voigts' experts were wrong, the Voigts' counsel concluded by representing the Voigts only wanted to have a "conversation" about their concerns. The Commission approved CCMC's applications on October 21, 2019. Case No. RC-19-189, Docket No. 60; Case No. RC-19-190, Docket No. 68.

[12.] The Voigts then requested a formal hearing to address their concerns about reclamation, reclamation liability, dust control, water erosion, alluvial valley floors, and road closures and access. Case No. RC-19-189, Docket No. 64; Case No. RC-19-190, Docket No. 75. That formal hearing occurred on December 16, 2019. On February 7, 2020, the Commission issued its Findings of Fact, Conclusions of Law and Order, which affirmed the Commission's prior order. Case No. RC-19-189, Docket No. 181; Case No. RC-19-190, Docket No. 197. As shown above, most, if not all, of these issues had already been addressed and/or litigated to the highest courts available.

But that did not stop the Voigts from bringing them forward once again, abusing the Commission process in another attempt to embarrass and harass CCMC through bad faith actions.

[13.] On December 9, 2019, CCMC moved for attorney's fees. Case No. RC-19-189, Docket No. 73; Case No. RC-19-190, Docket No. 84. On March 4, 2020, the Commission denied CCMC's motion on procedural grounds. Case No. RC-19-189, Docket No. 185; Case No. RC-19-190, Docket No. 201. The Commission, however, made its expectations for the Voigts clear:

The Commission is not exercising its discretion to grant attorney fees in the present case, but continued persistence in litigation of claims with little to no merit and repetitive litigation of issues evidence bad faith and harassment. CCMC is correct when it states that a "conversation" may occur outside of the administrative process, even with the participation of the Reclamation Division. A petition for an informal conference by an interested party that is adversely affected or by the Commission's request may also be necessary. However, once a petition for formal hearing is received, particularly for parties with counsel, the Commission will expect that such claims have a reasonable basis, be supported by sufficient allegations of facts and supporting evidence, and take care to avoid relitigation of issues.

Case No. RC-19-189, Docket No. 185, at p. 3 (emphasis added); Case No. RC-19-190, Docket No. 201, at p. 3 (emphasis added). That admonishment apparently did not have its intended effect.

**E. The parties previously discuss SPGM with the Commission.**

[14.] On March 17, 2022, CCMC applied to revise NACC-1302 in various respects. Case No. RC-22-233, Docket No. 1. On August 29, 2022, the Voigts objected to that application. Case No. RC-22-233, Docket No. 16. Amongst other issues, the Voigts objected to CCMC's proposed revisions to Sections 2.5.4 and 2.5.7 concerning suitable plant growth material ("SPGM") on six tracts of land, two of which the Voigts do not own. *See id.* at p. 2. Specifically, the Voigts accused CCMC of trying to "significantly reduce the amount of [SPGM] being respread across the mine." *Id.* The Voigts requested an informal conference on that and other issues. *Id.* at p. 3.

[15.] The informal conference occurred on October 12, 2022. Case No. RC-22-233, Docket No. 31. At that informal conference, "Mr. Braaten and the Voigts admitted that they did not fully

understand Policy Memorandum No. 17 to Mine Operators and how the [SPGM] calculations are conducted.” Case No. RC-22-233, Docket No. 52, at ¶ 36. Accordingly, “Monte Johnson discussed, and answered questions, regarding the analysis for SPGM respread.” *Id.* He explained that “[t]he amount of SPGM to be replaced is dependent on the Sodium Absorption Ratio and texture of the overburden as described in N.D.A.C. § 69-05.2-15-04.” *Id.* at ¶ 43. In short, projected SPGM respread and actual SPGM respread are not the same thing. *Id.* at ¶¶ 41–42.

[16.] The Voigts, however, did not limit the scope of the informal conference to their SPGM concerns. They again tried to discuss dust, road access, their coal lease, and so on. The Voigts went so far as to begin the informal conference by attempting to display a video concerning dust, that was taken prior to 2018, many years before the informal conference. *Id.* at ¶ 16. Those were the same issues that had been extensively discussed before and resolved by the courts.

[17.] The Commission approved the proposed revisions to NACC-1302 on November 9, 2022. *Id.* The Commission specifically concluded that “CCMC’s revised Projected Soil Respread Depth Map, Section 2.5.7 of the Permit, submitted with Revision No. 12 meets the requirements of N.D.A.C. §§ 69-05.2-08-05, 69-05.2-15 and Policy Memorandum No. 17 to Mine Operators.” *Id.* at ¶ 56. Concerning the Voigts’ claim that their coal lease with CCMC somehow governed SPGM respread, the Commission concluded that “the Commission does not have jurisdiction over coal or surface lease terms, conditions, practices, or private agreements and negotiations.” *Id.* at ¶ 45.

## **II. The Voigts challenge the grade approvals COY-034 through COY-039.**

[18.] CCMC understood that the Voigts may have still had some confusion concerning the SPGM issue, and CCMC engaged with the Voigts to discuss their concerns. On May 24, 2023, CCMC representatives met with Casey Voigt for multiple hours to discuss the prebench/regrade and the grade approval process, both in the office and in the field. Separately, Commission staff

spent a day with Casey Voigt explaining these issues. Those meetings confirm that the Voigts have means of having their concerns addressed outside of the formal administrative processes, and the discussions were exactly what the Commission contemplated when it previously recognized that “CCMC is correct when it states that a ‘conversation’ may occur outside of the administrative process, even with the participation of the Reclamation Division.” Case No. RC-19-189, Docket No. 185, at p. 3; Case No. RC-19-190, Docket No. 201, at p. 3.

[19.] The Voigts nevertheless continued to assert that CCMC was violating N.D.A.C. § 69-05.2-15-04(4)(a)(2) by not placing forty-eight inches of SPGM across the entirety of their property. They, accordingly, challenged grade approvals COY-034 through COY-039 in multiple administrative appeals to North Dakota state district court for Burleigh County. *Voigt v. N.D. Public Serv. Comm’n*, Case No. 08-2023-CV-01338 (Burleigh County District Court) (concerning COY-035, COY-036, and COY-037); *Voigt v. N.D. Public Serv. Comm’n*, Case No. 08-2023-CV-01964 (Burleigh County District Court) (concerning COY-034); *Voigt v. N.D. Public Serv. Comm’n*, Case No. 08-2023-CV-02561 (Burleigh County District Court) (concerning COY-038 and COY-039). Once the Voigts filed the appeals, the parties faced the choice of whether to fight several consolidated appeals at the district court level without the opportunity to provide appropriate evidentiary findings or be forced to engage in a Commission proceeding to defend CCMC and Commission actions under the appropriate rules and law. The parties agreed to stay those appeals and have the Voigts file a formal administrative complaint with the Commission.

[20.] The Voigts filed that Complaint in the current administrative proceeding on November 22, 2023, alleging that the disputed grade approvals did not comply with N.D.A.C. § 69-05.2-15-04(4)(a)(2). Docket No. 1. The Voigts alleged that N.D.A.C. § 69-05.2-15-04(4)(a)(2), *id.* at ¶ 24, and their coal lease with CCMC’s affiliate, *id.* at ¶ 25, each required that CCMC provide a 48-inch

SPGM respread depth across the entirety of the disputed grades. In addition to requiring CCMC to abide by the SPGM requirement, the Voigts subsequently requested relief consisting of sodium migration monitoring, crop productivity monitoring, and other relief.

[21.] The Voigts, through counsel, noticed a corporate deposition of CCMC under N.D.R.Civ.P. 30(b)(6). On December 14, 2023, a CCMC representative sat for an approximately three-hour deposition. During that deposition, the CCMC representative explained that the Voigts were conflating projected SPGM respread depths with what the actual SPGM respread depths required once reclamation began. The CCMC representative explained that the projected SPGM calculation was intended to ensure that CCMC had enough SPGM volumes available to conduct reclamation. The CCMC representative explained that the projected SPGM calculation did so by considering the least favorable 20% of sample intervals, *i.e.*, those with the highest sodium absorption ratios (“SAR”), to calculate a conservative estimate of respread depths. The CCMC representative explained that the actual SPGM thickness is calculated by evaluating the soil texture and SAR for graded spoil once in place. The CCMC representative made clear that N.D.A.C. § 69-05.2-15-04(4)(a)(2) applies to actual, not projected, respread depths. The CCMC representative further made clear that forty-eight inch SPGM respread depth was the maximum required by law, and lesser amounts could apply based upon the in-place graded spoil characteristics.

[22.] Despite having those issues informally explained to them on multiple occasions, and despite CCMC having formally explained those differences under oath in a three-hour deposition, the Voigts proceeded to the formal hearing on December 22, 2023. The Voigts did so fully aware that the Commission had previously told them that, “once a petition for formal hearing is received, particularly for parties with counsel, the Commission will expect that such claims have a reasonable basis, be supported by sufficient allegations of facts and supporting evidence, and take

care to avoid relitigation of issues.” Case No. RC-19-189, Docket No. 185, at p. 3 (emphasis added); Case No. RC-19-190, Docket No. 201, at p. 3 (emphasis added). At that hearing, the Voigts did not bring reasonable allegations and failed to provide any legitimate evidence to support their allegations. Based upon the evidence and testimony, the Commission affirmed the disputed grade approvals. Order, at ¶¶ 61–65.

### **ARGUMENT**

[23.] The Voigts’ abuse of the administrative process is nothing new. The Commission already warned the Voigts what would happen if they brought meritless grievances to the Commission for a formal hearing. The Voigts apparently chose to ignore the Commission’s warning, as: (1) they brought the current Complaint based upon allegations that they knew or should have known lacked any merit; and (2) requested multiple forms of relief that the Commission had no authority to provide. The Commission should award CCMC its attorney’s fees and costs.

#### **I. The Commission may award attorney’s fees in this proceeding.**

[24.] The Commission generally has the authority to award costs and expenses, including attorney’s fees, in any proceeding when that award is “proper.” N.D.C.C. § 38-14.1-36(1); *see also* N.D.A.C. § 69-05.2-01-07(1). Any party may request those costs and expenses within forty-five days of receipt of the Commission’s order. N.D.C.C. § 38-14.1-36(1); *see also* N.D.A.C. § 69-05.2-01-07(2). Specific as to permittees, the Commission may award costs and expenses to the permittee “where the permittee demonstrates that the person . . . participated in the proceeding in bad faith to harass or embarrass the permittee.” N.D.A.C. § 69-05.2-01-07(5)(d).

#### **A. The Order is not dispositive of this motion.**

[25.] From the outset, CCMC recognizes that the Commission stated that it “declines to assess fees” pursuant to N.D.C.C. § 38-14.1-36 based “upon the circumstances of the proceeding.” Order,

at ¶ 65. As the Commission held concerning CCMC’s previous request for fees, “N.D. Admin. Code § 69-05.2-01-07 contemplates the petition [for attorney’s fees and costs] being filed subsequent to issuance of a final order.” Case No. RC-19-189, Docket No. 185, at p. 3 (emphasis added); Case No. RC-19-190, Docket No. 201, at p 3 (emphasis added). Nothing in the Commission’s statutes or regulations allows the Commission to deny that motion before it is brought, because both N.D.C.C. § 38-14.1-36(1) and N.D.A.C. § 69-05.2-01-07(2) specify the time in which a party can bring the motion. If CCMC was too early in bringing its motion in the prior proceeding (as the Commission held), the Commission cannot now conclude CCMC is too late here. The Commission’s preemptive denial occurred before CCMC could even bring this motion. Respectfully, the Order does not follow the Commission’s own procedures.

[26.] Basic notions of constitutionally required due process entitle a party to be heard. *Cockfield v. City of Fargo*, 2019 ND 77, ¶ 17, 924 N.W.2d 403. The Commission’s preemptive denial, without the benefit of argument, and without any reasoning, contradicts that basic idea. The Commission should provide CCMC with due process by considering the merits of this motion, which is timely under the Commission’s statutes and regulations. But, to the extent the Commission has authority to deny a nonexistent motion, CCMC alternatively requests that the Commission reconsider the Order strictly as it concerns the fees issue.

**B. The Voigts had no legal basis for many of their objections.**

[27.] The Voigts’ references, wishes, and desires to effectuate rulemaking are not valid bases for filing a formal complaint and proceeding to a formal hearing. As the Commission made clear, “the Commission will expect that such claims have a reasonable basis, be supported by sufficient allegations of facts and supporting evidence, and take care to avoid relitigation of issues” once

brought to a formal hearing. Case No. RC-19-189, Docket No. 185, at p. 3; Case No. RC-19-190, Docket No. 201, at p 3. The Voigts disregarded that admonishment and reasonable expectation.

**1. The Voigts knew or should have known their Complaint concerning N.D.A.C. § 69-05.2-15-04(4)(a)(2) was legally incorrect.**

[28.] Projected and actual SPGM respread depths are not the same thing. Projected SPGM respread depths use “conservative estimate[s]” regarding SAR values, with the goal being to ensure that enough SPGM material exists for reclamation. *See* Order, at ¶¶ 10, 12, 18. By contrast, actual SPGM respread depth is determined based upon the texture and SAR values for the in-place spoil. Order, at ¶ 20. Because the conservative estimates are often worse than the in-place spoil, the “projected respread depth calculation typically accounts for a thicker projected SPGM to ensure adequate volumes of SPGM are available.” Order, at ¶ 15.

[29.] CCMC appreciates that some initial confusion could reasonably arise on this issue. To that end, CCMC does not fault “Mr. Braaten and the Voigts” for not “fully understand[ing] Policy Memorandum No. 17 to Mine Operators and how the [SPGM] calculations are conducted” when this issue first arose two years ago. Case No. RC-22-233, Docket No. 52, at ¶ 36. What occurred in this proceeding went much further than simple confusion.

[30.] At the informal conference in Case No. RC-22-233, “Monte Johnson discussed, and answered questions, regarding the analysis for SPGM respread.” *Id.* at ¶ 36. That included explaining that “the projected SPGM respread depths are only an estimate used for planning purposes” and that “the amount of SPGM to be replaced is dependent on the Sodium Absorption Ratio and texture of the overburden as described in N.D.A.C. § 69-05.2-15-04.” *Id.* at ¶¶ 42–43. CCMC also repeatedly explained the differences to the Voigts. CCMC did so in its conversations with Casey Voigt, including in the field. CCMC then did so at the informal conference, and then formally at CCMC’s 30(b)(6) deposition.

[31.] Despite both Commission staff and CCMC repeatedly explaining the differences, the Voigts proceeded to the formal hearing. The Commission summarized what happened next:

Voigts' Testimony	What CCMC told them	The Commission Held
Casey Voigt "alleged that the current process for SPGM respread was an exception to" N.D.A.C. § 69-05.2-15-04. Order at ¶ 8.	"Mr. Steffen emphasized that we do not use any data from the pre-mine projected overburden analysis to determine actual topsoil and subsoil redistribution depths." Order at ¶ 27.	"Mr. Voigt's assertion that different methods for calculating projected SPGM respread depths violate N.D.A.C. § 69-05.2-15-04 is incorrect." Order at ¶ 13.

Other than a simple unwillingness to understand the grade approval process, the Voigts had no justification for proceeding to a formal hearing on this issue.

[32.] Despite what they had been told, the Voigts could have (but failed to) rely on commonsense to reach that same conclusion. The Commission correctly pointed out the practical problems with the Voigts' assertion that N.D.A.C. § 69-05.2-15-04(4)(a)(2) required 48 inches of respread across all properties in North Dakota—the "Voigts' request for 48 inches of topsoil and subsoil to be respread would be more than what existed prior to mining." Order, at ¶ 37. The Voigts were wrong, and simple commonsense could have avoided a formal complaint and hearing. This leads to only one conclusion—the Voigts, once again, brought this proceeding in bad faith simply to harass CCMC and, in doing so, again wasted the Commission's time and resources.

**2. An administrative complaint is not the procedure for rulemaking.**

[33.] The Voigts knew they could not win their Complaint under the laws as written. They, instead, sought to use this complaint-based adjudicative proceeding as an attempt to create multiple new rules. But, by definition, an "adjudicative proceeding does not include rulemaking." N.D.C.C. § 28-32-01(1) (emphasis added). The Commission, instead, has a separate rulemaking

process that is available to any “person aggrieved or adversely affected by any regulation promulgated under” N.D.C.C. § 38-14.1-34. The Voigts knew of those limitations and procedures, yet they persisted in trying to create new rules for themselves in this proceeding.

[34.] The statutory limitation on the scope of this proceeding led to predictable results. As to their attempt to receive deeper SPGM respread depths, the Commission recognized:

<b>Voigts’ Testimony</b>	<b>What CCMC told them</b>	<b>The Commission Held</b>
The “Voigts did not provide an expert familiar with” the science that went into the existing regulations.” Order, at ¶ 45.	Mr. Steffen said “the existing regulations were based on sound science conducted in 1984 and adopted in 1987 and for the last 36 years he never found a problem with the requirements.” Order, at ¶ 42.	“These regulations went through the appropriate process . . . . To the extent that the purpose was to advocate for a future change in regulations, there are alternative processes that are more appropriate for the Commission to pursue a rule change.” Order, at ¶ 49.

The Voigts then shifted their attention to crop yields. The Commission recognized the problem with the Voigts’ effort to rely on crop yield data collected prior to bond release:

<b>Voigts’ Testimony</b>	<b>What CCMC told them</b>	<b>The Commission Held</b>
“The Voigts called Mr. John Weinand to testify about harvest yields on property leased by and located at a different mine.” Order, at ¶ 51.	“Mr. Steffen said mines do not report productivity sampling data until bond release.” Order, at ¶ 53.	“There are no requirements in the Commission statutes, rules or orders for CCMC to collect crop production data at this time and the Voigts did not demonstrate that additional monitoring was warranted.” Order, at ¶ 55

The Voigts then shifted to requesting the Commission order sodium migration monitoring in the SPGM and underlying spoil. The Commission (again) recognized the problem with that request:

Voigts' Testimony	What CCMC told them	The Commission Held
<p>“Mr. Voigt . . . suggested that dragline spoil quality be tested and monitored to determine if any sodium was migrating upward into respread SPGM.” Order, at ¶ 41.</p>	<p>“Mr. Steffen testified that a change in administrative code would be needed to require a minimum of 48 inches of SPGM on mined lands.” Order, at ¶ 42.</p>	<p>“The Voigts appear to be advocating for an administrative rule change to accommodate changes in respread and monitoring.” Order, at ¶ 41.</p>

On the law or regulations as written, the Commission concluded that the “Voigts have not met a burden of demonstrating that CCMC is in violation of a statute or regulation.” Order, at ¶ 64.

[35.] This adjudicative proceeding, as a matter of law, was limited to adjudicating the parties’ dispute under the laws and regulations as written. It was not a forum to consider how the Voigts wish the law and regulations were written. By litigating issues that were (again) beyond the scope of this proceeding, the Voigts wasted the Commission and CCMC’s time and resources, once again harassing CCMC through their bad faith actions.

**3. The Commission still has no authority over contract issues.**

[36.] The Commission has repeatedly made clear that it has no jurisdiction to consider any contract-related disputes between the parties under the coal lease. That includes disputes concerning SPGM respread under that lease. In no uncertain terms, the Commission held that it “does not have jurisdiction over coal or surface lease terms, conditions, practices, or private agreements and negotiations.” Case No. RC-22-233, Docket No. 52, at ¶ 45.

[37.] The Voigts, nevertheless, alleged that any “projected or actual respread depths for property owned by the Voigts should be set at forty-eight inches pursuant to the Voigts’ coal lease” and their preference statement. Docket No. 1, at ¶¶ 5, 25. This led to a predictable result:

<b>Voigts' Testimony</b>	<b>What CCMC told them</b>	<b>The Commission Held</b>
“The Voigts allege that SPGM respread should be set at 48 inches pursuant to their coal lease.” Order, at ¶ 56.	“Mr. Steffen stated that landowner preference statement is a reclamation requirement that establishes a landowner’s preferred post-mining land uses relative to the pre-mining land use.” Order, at ¶ 58.	“[T]he Commission does not have jurisdiction over coal lease terms, conditions, practices, or private agreements and negotiations.” Order, at ¶ 60.

Left for the imagination is how the Voigts reasonably believed the Commission had jurisdiction to consider these issues based upon the Commission’s prior conclusions.

[38.] But even if the Commission somehow had jurisdiction to consider the coal lease, the Voigts misrepresent what that lease provides. The coal lease provides CCMC with the right to “excavate, remove and transport suitable plant growth material from all or any portions of the Leased Premises and to permanently respread that material on lands other than the Leased Premises, provided such material is replaced with an approximate quantity of similar material from lands other than the Leased Premises[.]” Docket No. 61, at p. 2 (emphasis added). The lease does not require a 48-inch SPGM respread on the Voigt’s property, and the Commission recognized “Mr. Voigt did not provide a provision that required a 48-inch SPGM respread depth.” Order, at ¶ 57.

[39.] The Voigts have repeatedly and improperly brought contract-related disputes before the Commission for adjudication. This case was no exception, as they insisted on going further and misrepresenting what that lease provides. The Voigts’ insistence on bringing these issues to the Commission when being specifically instructed that the Commission has no jurisdiction and then misrepresenting those issues leads to only one conclusion—the Voigts are making these unfounded, bad faith allegations in a public formal hearing to embarrass and harass CCMC.

**C. The Voigts had no factual basis for many of their objections.**

[40.] The factual bases of the Voigts' objections fared no better. Knowing they had no basis for their Complaint, the Voigts shifted tactics at the formal hearing. They did not even attempt to present an expert witness to testify about the science that went into the regulations or any witness with the ability to support their claims. This in spite of the previous admonition that "the Commission will expect that such claims . . . be supported by sufficient allegations of facts and supporting evidence." Case No. RC-19-189, Docket No. 185, at p. 3. Instead of providing competent evidence, the Voigts relied upon undisclosed literature and cherry-picked data that had nothing to do with SPGM respread. The Voigts' surmise, conjecture, and speculation is not an appropriate basis for objecting to grade approvals that satisfy all current laws and regulations.

**1. The Voigts attempt to litigate through literature.**

[41.] The Voigts repeatedly alleged that the Commission's current regulation for actual SPGM respread depths insufficiently account for the extent to which sodium may upwardly migrate from underlying sodic spoil. As discussed above, those criticisms were inappropriate in the context of this complaint-based adjudicative proceeding because they have nothing to do with whether CCMC has abided by the appropriate and governing regulation. *See also* Order at ¶ 41.

[42.] That issue notwithstanding, the Voigts tried to substantiate their Complaint by relying on literature discussing sodium migration in general. Order, at ¶ 44. Because the Voigts had not reasonably disclosed that they would be discussing the literature, neither the Commission nor CCMC had a reasonable opportunity to prepare for that material. *See id.* ("Mr. Johnson expressed that . . . he had not reviewed the documentation and would need to do additional research"). Because the Voigts decided to present this information through literature, neither the Commission

nor CCMC had the opportunity to cross-examine or question the material. *Id.* at ¶ 45 (“the Voigts did not provide an expert familiar with the provided articles”).

[43.] Because the Voigts decided to present this information through literature, neither the Commission nor CCMC had the opportunity to question how/if this even applied or was relevant to the disputed grade approvals. The Voigts did not call any expert witness who had studied their property. The Voigts did not call any expert witness who could testify that sodium migration was occurring on their property to possibly impact revegetation performance. And the Voigts did not call any expert witness who could testify that the actual SPGM respread depth across their property was insufficient to account for sodium migration (if any) that was occurring.

[44.] This complaint-based adjudicative proceeding was supposed to adjudicate the disputed grade approval on the facts of the case. It was not a forum for the Voigts to raise abstract scientific questions that the Voigts made no effort to tie to the disputed grade approvals. The Voigts’ decision to pervert the purpose of this administrative proceeding, again, was an act of bad faith that clearly shows an intent to harass and embarrass.

## **2. The Voigts cherry-picked irrelevant data.**

[45.] Trying to provide some connection between reality and their Complaint, the Voigts presented the testimony of Mr. John Weinand. Order, at ¶ 51. Mr. Weinand leases various farmland, and he presented the Commission with crop yield maps. *Id.* Mr. Weinand testified that he receives yields of approximately 70% from “reclaimed lands” versus undisturbed lands. *Id.*

[46.] Mr. Weinand’s property, which is not located at or near the Coyote Creek Mine or within CCMC’s mine permit, however, was used for soil storage—it was not reclaimed using the disputed SPGM respread depths. Accordingly, his testimony concerning crop yields was completely irrelevant. As the Commission recognized, the “assertions of reduced yields are not applicable to

the Voigt mined lands . . . [because these] were areas of associated disturbance, not areas subject to SPGM respread based on graded spoil properties.” Order, at ¶ 52.

[47.] That was before considering the other glaring holes in Mr. Weinand’s testimony. Although he “has leased the property for over 10 years,” Order, at ¶ 52, the Commission correctly recognized that Mr. Weinand only “provided readings on selected years.” Order, at ¶ 51. Both the Commission and CCMC were left to guess what the crop yields looked like in a different year. The Voigts provided no explanation for why those yield reports were not included, and the Voigts could have chosen to have Mr. Weinand highlight a low-yield year. The Voigts’ insistence on presenting incomplete evidence and testimony that is irrelevant and beyond the scope of relief the Commission can provide, again, bears the hallmarks of bad faith and harassment.

### CONCLUSION

[48.] CCMC recognizes its reclamation responsibilities, including providing the Voigts’ property with all required SPGM. Not only is CCMC required to provide the SPGM required by law, doing so is in CCMC’s interest. According to one witness called by the Voigts, it is in CCMC’s “best interest . . . to ensure the appropriate respread depth and protect soil health to ensure they can meet the revegetation productivity performance standards to avoid costly work or soil amendments to obtain bond release.” Order, at ¶ 24. But CCMC is not required to provide the Voigts with more SPGM than which existed on their property prior to mining. Order, at ¶ 37.

[49.] The Commission warned the Voigts what would happen if they persisted in bringing claims that lacked any reasonable basis, were not supported by facts, or which were previously litigated. Case No. RC-19-189, Docket No. 185, at p. 3; Case No. RC-19-190, Docket No. 201, at p. 3. Instead of limiting this proceeding to whether COY-034 through COY-039 complied with N.D.A.C. § 69-05.2-15-04(4)(a)(2), the Voigts tried to engage in rulemaking and sought to have

the Commission adjudicate contract issues, neither of which the Commission had jurisdiction to do here. And worse yet, the Voigts provided no factual or evidentiary support for their objections.

[50.] The Voigts did not participate in this N.D.C.C. ch. 38-14.1 proceeding with a reasonable, legitimate purpose. The Voigts have (again) abused the administrative processes available through the Commission for no purpose other than harassing CCMC. That has prevented the Commission from devoting itself to issues of public importance and unnecessarily driven up CCMC's costs. There is only one way to stop the Voigts from continuing to monopolize the Commission's time and resources with frivolous complaints and from continuing to act in bad faith by using publicly available processes to harass CCMC—an award of costs and attorney's fees.

[51.] On the foregoing, CCMC requests that the Commission award CCMC its costs and expenses, including attorney's fees, under N.D.C.C. § 38-14.1-36 and N.D.A.C. § 69-05.2-01-07.

Redacted invoices evidencing the requested attorney's fees are included in Exhibit A.

Dated this 2nd day of April, 2024.

*/s/ Wade C. Mann*

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

**Casey and Julie Voigt** )  
**v. Coyote Creek Mining Co., L.L.C.,** )  
**Complaint** )

**Case No. RC-23-348**  
**OAH File No. 20230391**

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**AFFIDAVIT OF WADE C. MANN**

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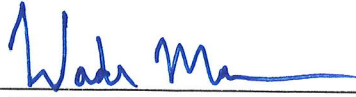
STATE OF NORTH DAKOTA )  
 )SS:  
COUNTY OF BURLEIGH )

I, Wade C. Mann, being first duly sworn, depose and state as follows:

[1.] I am an attorney with Crowley Fleck PLLP, licensed to practice law in the State of North Dakota, and make this Affidavit, having first-hand knowledge of the statements herein, on behalf of Coyote Creek Mining Co., L.L.C.

[2.] Exhibit A is a true and correct copy of the attorney's fees and costs incurred by Coyote Creek Mining Co., L.L.C. in this matter. The total amount of attorney's fees incurred by, and that either have been or, for very recent charges, will be, billed to Coyote Creek Mining Co., L.L.C. is \$52,327.00 and \$587.00 in additional costs. The rates varied on the file from \$285.00 per hour to \$470.00 per hour. Those rates are customary in the area for legal services associated with similar proceedings and are commensurate with the experience, reputation, and ability of these individuals who performed those services.

Dated this 2nd day of April, 2024.

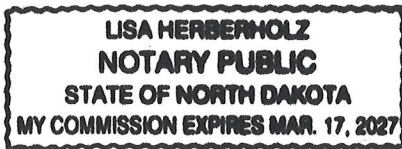


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(701) 223-6585

Subscribed and sworn to before me this 2nd day of April, 2024, by Wade C. Mann.

[S E A L]



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Notary Public for the State of North Dakota

# Statement of Account



021919 Coyote Creek Mining Company, L.L.C.  
 000026 Voigt Complaint Regarding Topsoil Respread

11/01/2023 -  
 Time & Rate: Original Value

918 E Divide Avenue, Suite 200  
 Bismarck, ND 58501

## Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
11/1/2023	WCM	E-mail communications with counsel for Voigts regarding consolidation of appeals; review and analyze draft proposed stipulation and proposed order.	0.20	\$425	\$85.00	\$85.00
11/2/2023	WCM	Telephone conference with Chris Friez regarding [REDACTED]	0.30	\$425	\$127.50	\$127.50
11/6/2023	WCM	E-mail communications with counsel for Voigts and with counsel for PSC regarding consolidation of appeals and stipulation and proposed order.	0.20	\$425	\$85.00	\$85.00
11/8/2023	WCM	E-mail communications with counsel for Voigts and PSC regarding consolidation of appeals and stipulation.	0.20	\$425	\$85.00	\$85.00
11/17/2023	WCM	E-mail communications with counsel for Voigts and with counsel for PSC regarding informal conference exhibits; e-mail communications with PSC staff regarding documents requested by Voigts.	0.40	\$425	\$170.00	\$170.00
11/22/2023	WCM	Review ALJ request for hearing on Voigt respread complaint; review PSC docket and review complaint; e-mail communications with counsel for Voigt and counsel for PSC.	1.00	\$425	\$425.00	\$425.00
11/27/2023	WCM	E-mail communications with counsel for Voigt and counsel for PSC regarding hearing; e-mail communications with Chris Friez regarding [REDACTED] review and analyze grade approval tract map and coal lease and ratification.	1.20	\$425	\$510.00	\$425.00
11/29/2023	WCM	Work on answer to complaint.	2.00	\$425	\$850.00	\$425.00
<b>Total Fees: 11/2023</b>			<b>5.50</b>		<b>\$2,337.50</b>	<b>\$1,827.50</b>
12/4/2023	WCM	Review notice of hearing; review prior Voigt docket on revision 12 respread issues; work on answer; prepare for hearing.	2.80	\$425	\$1,190.00	\$765.00
12/5/2023	WCM	Prepare for hearing.	3.00	\$425	\$1,275.00	\$1,275.00
12/7/2023	WCM	E-mail communications with counsel for Voigts regarding 30b6 deposition; review deposition notice and 30b6 topics; e-mail communications with Chris Friez regarding [REDACTED] work on answer to complaint; prepare for hearing.	2.40	\$425	\$1,020.00	\$595.00
12/8/2023	WCM	E-mail communications with counsel for Voigts regarding 30b6 deposition; review deposition notice and 30b6 topics; e-mail communications with Chris Friez regarding [REDACTED] work on answer to complaint; prepare for hearing; Prepare for hearing.	5.40	\$425	\$2,295.00	\$1,870.00
12/8/2023	ZRE	Review Voigt's administrative complaint; review draft answer; review 30(b)(6) deposition notice; draft objections concerning the same.	1.90	\$335	\$636.50	\$636.50
12/11/2023	WCM	[REDACTED] meeting with Donn Steffen and Coyote Creek group; draft revisions to answer; e-mail communications with attorney Braaten regarding deposition; review amended 30(b)(6) deposition notice; review correspondence from attorney Braaten regarding witnesses for hearing; hearing preparation.	5.20	\$425	\$2,210.00	\$2,210.00
12/11/2023	ZRE	Review background materials and prior administrative proceedings in advance of [REDACTED] meeting; meeting with client concerning the same.	4.00	\$335	\$1,340.00	\$1,340.00
12/12/2023	WCM	Confer with attorney Eiken regarding [REDACTED] review draft objections and e-mail communications with Chris Friez [REDACTED] e-mail communications with counsel regarding witnesses for hearing; review OSM approvals of 69-05.2-15-04; prepare for hearing.	1.80	\$425	\$765.00	\$765.00
12/12/2023	ZRE	Finish drafting and revising objection to Voigt's 30(b)(6) deposition notice; finalize answer to administrative complaint.	0.80	\$335	\$268.00	\$268.00
12/13/2023	WCM	Prepare for hearing; review correspondence from attorney Braaten regarding soils handling plan.	2.40	\$425	\$1,020.00	\$1,020.00
12/13/2023	ZRE	Prepare for 30(b)(6) deposition, including review of lease and preference statement.	0.70	\$335	\$234.50	\$234.50
12/14/2023	ZRE	Deposition prep with client; attend and defend 30(b)(6) deposition.	6.50	\$335	\$2,177.50	\$2,177.50
12/18/2023	WCM	Review Donn Steffen 30(b)(6) deposition transcript and exhibits; prepare for hearing.	4.30	\$425	\$1,827.50	\$1,402.50

# Statement of Account

021919 Coyote Creek Mining Company, L.L.C.  
 000026 Voigt Complaint Regarding Topsoil Respread

11/01/2023-  
 Time & Rate: Original Value

## Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
12/19/2023	WCM	Prepare for hearing; review spreadsheet data prepared by Steven Price.	5.00	\$425	\$2,125.00	\$1,912.50
12/20/2023	WCM	meeting with Donn Steffen and CCMC group; preparation for hearing.	6.00	\$425	\$2,550.00	\$2,550.00
12/21/2023	WCM	meeting with Donn Steffen; preparation for hearing; review and analyze PSC's proposed exhibits.	9.00	\$425	\$3,825.00	\$3,187.50
12/22/2023	WCM	Preparation for hearing; meeting with Donn Steffen, Chris Friez and Brenden Brinkman participate in hearing.	8.00	\$425	\$3,400.00	\$3,400.00
<b>Total Fees: 12/2023</b>			<b>69.20</b>		<b>\$28,159.00</b>	<b>\$25,609.00</b>
1/8/2024	WCM	Review and analyze exhibits and begin working on closing and proposed findings of fact, conclusions of law and order.	1.20	\$470	\$564.00	\$564.00
1/9/2024	WCM	E-mail communications with counsel regarding proposed stipulation to dismiss and proposed order to dismiss; review drafts of proposed stipulation to dismiss and proposed order to dismiss; e-mail communications with Chris Friez regarding work on closing and proposed findings of fact, conclusions of law and order.	2.30	\$470	\$1,081.00	\$1,081.00
1/10/2024	WCM	Work on closing and proposed findings of fact, conclusions of law and order.	1.20	\$470	\$564.00	\$564.00
1/12/2024	WCM	Work on closing and proposed findings of fact, conclusions of law and order.	1.80	\$470	\$846.00	\$846.00
1/15/2024	WCM	Review and analyze testimony and exhibits; work on closing argument and proposed findings of fact, conclusions of law and order.	1.60	\$470	\$752.00	\$752.00
1/16/2024	WCM	Review and analyze testimony and exhibits; work on closing argument and proposed findings of fact, conclusions of law and order.	1.40	\$470	\$658.00	\$658.00
1/17/2024	WCM	Work on closing argument and proposed findings of fact, conclusions of law and order.	2.10	\$470	\$987.00	\$987.00
1/18/2024	WCM	Work on closing argument and proposed findings of fact, conclusions of law and order.	2.80	\$470	\$1,316.00	\$1,316.00
1/19/2024	WCM	Finalize, serve and file closing argument and proposed findings of fact, conclusions of law and order.	1.40	\$470	\$658.00	\$658.00
<b>Total Fees: 01/2024</b>			<b>15.80</b>		<b>\$7,426.00</b>	<b>\$7,426.00</b>
2/14/2024	WCM	PSC meeting to approve findings of fact, conclusions of law and order.	1.30	\$470	\$611.00	\$470.00
2/20/2024	WCM	Review and analyze findings of fact, conclusions of law and order; e-mail communications with Chris Friez regarding order.	0.50	\$470	\$235.00	\$188.00
2/23/2024	WCM	Teams call with Chris Friez and attorney Eiken regarding confer with attorney Eiken regarding review Public Service Commission order.	0.50	\$470	\$235.00	\$235.00
2/23/2024	ZRE	Phone call with client and attorney Mann regarding review Public Service Commission order.	1.00	\$385	\$385.00	\$385.00
2/26/2024	ZRE	Continue drafting motion for attorney's fees; discuss the same with attorney Mann.	2.40	\$385	\$924.00	\$924.00
2/27/2024	ZRE	Continue drafting motion for attorney's fees.	1.60	\$385	\$616.00	\$616.00
2/29/2024	ZRE	Continue drafting motion for attorney's fees.	1.40	\$385	\$539.00	\$539.00
<b>Total Fees: 02/2024</b>			<b>8.70</b>		<b>\$3,545.00</b>	<b>\$3,357.00</b>
3/4/2024	ZRE	Continue drafting motion for attorney's fees.	3.60	\$385	\$1,386.00	\$1,386.00
3/5/2024	ZRE	Continue drafting motion for attorney's fees.	3.20	\$385	\$1,232.00	\$1,232.00
3/6/2024	ZRE	Continue drafting motion for attorney's fees.	1.40	\$385	\$539.00	\$539.00
3/8/2024	ZRE	Continue drafting motion for attorney's fees.	1.30	\$385	\$500.50	\$500.50
3/11/2024	ZRE	Continue drafting and revising motion for attorney's fees.	1.00	\$385	\$385.00	\$385.00
3/12/2024	ZRE	Continue drafting and revising motion for attorney's fees.	3.30	\$385	\$1,270.50	\$1,270.50
3/13/2024	WCM	E-mail communications with Chris Friez regarding confer with attorney Eiken regarding	0.20	\$470	\$94.00	\$94.00
3/13/2024	ZRE	Continue drafting and revising motion for attorney's fees.	2.40	\$385	\$924.00	\$924.00
3/14/2024	WCM	Review and revise motion for attorneys fees; Review and analyze notice of appeal; e-mail communications with Chris Friez regarding	1.40	\$470	\$658.00	\$658.00

# Statement of Account

021919 Coyote Creek Mining Company, L.L.C.  
 000026 Voigt Complaint Regarding Topsoil Respread

11/01/2023 -  
 Time & Rate: Original Value

## Fees

Date	ID	Description	Time	Hrly Rate	Orig Amount	Bill Amount
3/14/2024	ZRE	Finish drafting and revising motion for attorney's fees; discuss [REDACTED] with attorney Mann; review notice of appeal.	1.70	\$385	\$654.50	\$654.50
3/15/2024	WCM	Review and revise motion for attorneys fees; e-mail communications with Chris Friez regarding [REDACTED]	2.30	\$470	\$1,081.00	\$1,081.00
3/19/2024	WCM	Review notice to appellants of estimated costs of transcript; review letter from Steve Kahl regarding record on appeal.	0.20	\$470	\$94.00	\$94.00
3/19/2024	ZRE	Review client's changes to motion for attorney's fees; review issues concerning the same; discuss the same with attorney Mann; incorporate changes into the same.	1.30	\$385	\$500.50	\$500.50
3/20/2024	WCM	Review revisions to attorney's fees brief; Teams meeting with CCMC regarding [REDACTED]	0.50	\$470	\$235.00	\$235.00
3/20/2024	ZRE	Continue incorporating client changes and suggestions into motion for attorney's fees; discuss [REDACTED] with attorney Mann.	2.50	\$385	\$962.50	\$962.50
3/21/2024	WCM	Review and analyze revisions to CCMC attorney's fees brief; review correspondence from counsel for Voigts to PSC regarding certification of the record on appeal.	0.80	\$470	\$376.00	\$376.00
3/21/2024	ZRE	Finish drafting and revising motion for attorney's fees.	1.80	\$385	\$693.00	\$693.00
3/25/2024	WCM	Revisions to attorney's fees brief.	1.00	\$470	\$470.00	\$470.00
3/29/2024	WLC	Review and verify citations in motion for attorney's fees.	7.20	\$285	\$2,052.00	\$2,052.00
<b>Total Fees: 03/2024</b>			<b>37.10</b>		<b>\$14,107.50</b>	<b>\$14,107.50</b>
<b>Total Fees:</b>			<b>136.30</b>		<b>\$55,575.00</b>	<b>\$52,327.00</b>

## Costs and Expenses

Date	Description	Orig Expense	Orig Cost	Bill Amount
12/20/2023	Stephanie A. Smith, Inc.- Transcript of 30(b)(6) Audiovisual Deposition of Coyote Creek Mining Company (Donn Steffen) on 12/14/23		\$587.00	\$587.00
<b>Total Costs/Expenses: 12/2023</b>		<b>\$0.00</b>	<b>\$587.00</b>	<b>\$587.00</b>
<b>Total Costs/Expenses:</b>		<b>\$0.00</b>	<b>\$587.00</b>	<b>\$587.00</b>

## Other Accounting

Date	Description	Amount
01/16/2024	Payment	\$1,827.50
02/05/2024	Payment	\$26,196.00

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

**Casey and Julie Voigt** )  
**v. Coyote Creek Mining Co., L.L.C.,** )  
**Complaint** )

**Case No. RC-23-348**  
**OAH File No. 20230391**

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**CERTIFICATE OF SERVICE**

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[¶1] I hereby certify that on the 2nd day of April, 2024, a true and correct copy of the following documents:

- 1. Motion for Attorney’s Fees Pursuant to N.D.C.C. § 38-14.1-36 and N.D.A.C. § 69-05.2-01-07; and**
- 2. Affidavit of Wade C. Mann (w/Exhibit A)**

were filed with the North Dakota Public Service Commission, and were served via electronic mail and U.S. Mail, postage prepaid, upon the following:

John Schuh  
Special Assistant Attorney General  
ND Public Service Commission  
600 E. Boulevard Ave., Dept. 408  
Bismarck, ND 58505-0480  
[jschuh@nd.gov](mailto:jschuh@nd.gov)

Derrick Braaten  
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109 North 4<sup>th</sup> Street, Suite 100  
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Hope L. Hogan  
Administrative Law Judge  
Office of Administrative Hearings  
2911 North 14<sup>th</sup> Street, Suite 303  
Bismarck, ND 58503  
[hlhogan@nd.gov](mailto:hlhogan@nd.gov)

DATED this 2nd day of April, 2024.

By: /s/ Wade C. Mann

WADE C. MANN (ND #05871)

wmann@crowleyfleck.com

CROWLEY FLECK PLLP

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

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