

**Thompson, Pamela J.**

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**Sent:** Wednesday, April 10, 2024 8:06 AM  
**To:** Thompson, Pamela J.  
**Subject:** Filing Accepted for Case: 08-2024-CV-00694; Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.; Envelope Number: 5616471

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# Filing Accepted

Envelope Number: 5616471  
Case Number: 08-2024-CV-00694  
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>	08-2024-CV-00694
<b>Case Style</b>	Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.
<b>Date/Time Submitted</b>	4/9/2024 4:25 PM CST
<b>Date/Time Accepted</b>	4/10/2024 8:05 AM CST
<b>Accepted Comments</b>	
<b>Filing Type</b>	Exhibit
<b>Filing Description</b>	CR Exhibit 10 - Declaration of Service - Amended Notice of Deposition of Coyote Creek Mining Company, L.L.C. Pursuant To Rule 30(b)(6)
<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 10 - Declaration of Service - Amended Notice of Deposition of Coyote Creek Mining Company L.L.C. Pursuant To Rule 30(b)(6).pdf
<b>Lead Document Page Count</b>	6
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**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

Casey and Julie Voigt,	)	
	)	Case No.: RC-23-348
Complainant,	)	
	)	<b>DECLARATION OF SERVICE</b>
v.	)	
	)	
Coyote Creek Mining Company, L.L.C.,	)	
	)	
Respondent.	)	
	)	

[¶1] I hereby certify that true and correct copies of the following documents:

- **Amended Notice of Deposition of Coyote Creek Mining Company, L.L.C. Pursuant to Rule 30(b)(6); and**
- **Declaration of Service.**

were, on the 11<sup>th</sup> day of December, 2023, electronically served and placed in the US Mail to:

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

Wade Mann  
 Attorney for Coyote Creek Mining Company, LLC  
 P.O. Box 2798  
 Bismarck, ND 58502-2798  
[wmann@crowleyfleck.com](mailto:wmann@crowleyfleck.com)

I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

Signed on this 11<sup>th</sup> day of December, 2023 at Bismarck, North Dakota.

  
\_\_\_\_\_  
Desirae Zaste

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

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Casey and Julie Voigt,	)	
	)	Case No.: RC-23-348
Complainant,	)	
	)	
v.	)	<b>AMENDED NOTICE OF DEPOSITION</b>
	)	<b>OF COYOTE CREEK MINING</b>
Coyote Creek Mining Company, L.L.C.,	)	<b>COMPANY, L.L.C. PURSUANT TO</b>
	)	<b>RULE 30(b)(6)</b>
Respondent.	)	
	)	

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**TO:** Coyote Creek Mining Company, L.L.C., by and through its attorney, Wade Mann, Crowley & Fleck PLLP, 100 W. Broadway, Ste. 250, P.O. Box 2798, Bismarck, ND 58502-2798:

[¶1] PLEASE TAKE NOTICE that, pursuant to N.D.C.C. § 28-32-33 and Rule 30(b)(6) of the North Dakota Rules of Civil Procedure, Complainant Casey and Julie Voigt (“Landowners” or “Voigts”) will take the deposition upon oral examination of Respondent Coyote Creek Mining Company, LLC (“CCMC” or “Mine”) through one or more of its officers, directors, managing agents, or other representatives who shall be designated to testify on the Mine’s behalf regarding all information known or reasonably available to the Mine with respect to the subject matters identified in Exhibit A.

[¶2] The deposition shall commence on December 14, 2023, at 1:00 p.m. (Central Time), and continue thereafter until complete, at the offices of Crowley Fleck 100 W. Broadway, Ste. 250, Bismarck, North Dakota 58501. The deposition shall be conducted before a court reporter, or other officer authorized by law to administer oaths, and shall be recorded by stenographic means and supplementally recorded by video. The deposition will be taken for the purposes of discovery, for use at hearings, or for other purposes as permitted under the North Dakota Rules of Civil Procedure and N.D.C.C. ch. 28-32.

Dated this 11<sup>th</sup> day of December, 2023.

**BRAATEN LAW FIRM**

*/s/ Derrick Braaten*

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Derrick Braaten (ND #06394)  
109 North 4<sup>th</sup> Street, Suite 100  
Bismarck, ND 58501  
Phone: 701-221-2911  
[derrick@braatenlawfirm.com](mailto:derrick@braatenlawfirm.com)

*Attorneys for Complainants  
Casey and Julie Voigt*

## EXHIBIT A TO NOTICE OF DEPOSITION OF CCMC

In accordance with N.D.R.Civ.P. 30(b)(6), Voigts designate the following topics and matters for examination.

### TOPICS FOR EXAMINATION

1. The grade approval requests and approvals designated as, COY-034, COY-035, COY-036, COY-037, COY-038, and COY-039 (collectively, “disputed grade approvals”). Without limiting the generality of the foregoing, the specific calculations and processes used by the Mine to calculate the SPGM depths for each of the disputed grade approvals and the samples, analyses, and other documentation used for such calculations.
2. Pursuant to ND Public Service Commission Policy Memo Number 17, “If scrapers or truck/shovel operations are to be used to remove some or all of the overburden, the respread thickness will be specified based on the site specific stripping procedures as well as the overburden characteristics.” As used in Policy Memo 17, the “scrapers and truck/shovel operations” used by the Mine to remove overburden and the manner in which the overburden is tested (including but not limited to tests for EC and SAR) and the manner in which overburden is stored, segregated, and respread. Any “site specific stripping procedures” used by the Mine as referenced in Policy Memo 17 and any “overburden characteristics” utilized by the Mine to determine SPGM respread depths for the disputed grade approvals, including the testing and analyses of SPGM and/or overburden used for such determinations. The manner in which the Mine segregates SPGM that is handled by the “scrapers and truck/shovel operations” in order to ensure that higher quality overburden is utilized pursuant to Policy Memo 17 near the surface where SPGM is respread.
3. The documentation of any testing, analyses, inspections, and examinations conducted on overburden or SPGM and related to the disputed grade approvals.
4. Revision 12 to NACC-1302, CCMC's mine permit, includes the following language at Section 2.5.4:

Where overburden depths are less than 85 feet above coal, respread depths were calculated by identifying the best sample from the worst 20% of samples at each borehole location. Where overburden depths are greater than 85 feet above coal, a different method will be utilized to calculate projected respread depths. Overburden up to 85 feet in depth is typically spoiled by the dragline using a simple side casting method. When overburden depths exceed 85 feet, a truckshovel pre-bench fleet will normally remove any overburden greater than 85 feet above coal. Prebench material is usually hauled across the active pit and placed on spoils created by the dragline. Because of this mining method, where pre-benching operations occur, the projected respread thickness will be based on the best

sample from the worst 20% of samples of the overburden removed by the pre-bench fleet. This depth from the surface will be determined by subtracting 85 feet from the total depth of overburden, which would account for the overburden removed by the dragline. The 85 foot cover limit line is shown on the Projected Soil Respread Depth Map of Section 2.5.7. Holes have not been drilled on tracts with unleased Federal Coal, so these areas were assumed to require the maximum 48 inch respread depth. Since most of the land surrounding these tracts requires 48 inches, it is likely that this will be the actual depth required.

- a. With respect to the language above, the following subtopics are incorporated into this topic number four:
  - i. All calculations conducted by the Mine pursuant to the language above from Section 2.5.4 with respect to the disputed grade approvals.
  - ii. Any occurrences and instances in which the overburden depths exceeded 85 feet and “a truckshovel pre-bench fleet” did not “remove any overburden greater than 85 feet above coal” as referenced in Section 2.5.4.
  - iii. The Mine calculates respread thickness when “based on the best sample from the worst 20% of samples of the overburden removed by the pre-bench fleet” and the manner in which the “best sample” is determined to be the “best sample” including the testing and analyses undertaken on any overburden or SPGM samples in conjunction with this determination.
  - iv. As it relates to the disputed grade approvals, the manner in which the Mine determines which areas have greater than 85 feet of overburden when not determined directly by soil borings. Specifically, for areas depicted on the Projected Soil Respread Depth Map of Section 2.5.7 as having “overburden depth greater than 85 feet” the manner in which the areas demarcated on the map as such were determined to have overburden depth greater than 85 feet, particularly when not immediately adjacent to a soil bore providing data directly indicating overburden depth.
  - v. The reason for and basis for the assumption in the following statement from Section 2.5.7: “Holes have not been drilled on tracts with unleased Federal Coal, so these areas were assumed to require the maximum 48 inch respread depth.”
5. The manner in which the Mine interprets, applies, and complies with Policy Memo 17.
6. The manner in which the Mine interprets, applies, and complies with N.D.A.C. § 69-05.2-15-04.