

**Thompson, Pamela J.**

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# Filing Accepted

Envelope Number: 5616690  
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 6:34 PM CST
<b>Date/Time Accepted</b>	4/10/2024 8:44 AM CST
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<b>Filing Type</b>	Exhibit
<b>Filing Description</b>	CR Exhibit 85 - Exhibit PSC-3 - Permit to Engage in Surface Coal Mining and Reclamation Operations dated 10-22-14
<b>Activity Requested</b>	EFileAndServe
<b>Filed By</b>	Pamela Thompson
<b>Filing Attorney</b>	John Schuh

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Civil Case No. 08-2024-CV-00694

CR Exhibit 85 - Exhibit PSC-3 - Permit to Engage in Surface Coal Mining and Reclamation Operations dated 10-22-14

**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**Coyote Creek Mining Company, L.L.C**  
**Permit NACC-1302**  
**Application**

**Case No. RC-13-850**

**PERMIT TO ENGAGE IN  
SURFACE COAL MINING AND RECLAMATION OPERATIONS**

**October 22, 2014**

Based on the application for **Surface Coal Mining Permit Number NACC-1302** submitted by Coyote Creek Mining Company, L.L.C. for the Coyote Creek Mine on November 1, 2013, and as revised through October 10, 2014, and all information and documentation contained therein, the North Dakota Public Service Commission (Commission) finds that the application meets all applicable requirements of Chapter 38-14.1 of the North Dakota Century Code (NDCC) and Article 69-05.2 of the North Dakota Administrative Code (NDAC). On the basis of the information set forth in the application or from that otherwise available and known by the applicant, the Commission finds that:

**Finding No. 1. The permit application is accurate and complete and complies with the requirements of NDCC Chapter 38-14.1 and NDAC Article 69-05.2 [NDCC 38-14.1-21(3)(a)].**

The applicant verified that all information included in the permit application is true and correct to the best of their knowledge. Permit NACC-1302 will allow surface coal mining and reclamation operations on 8,091.511 acres of land for the Coyote Creek Mine in Mercer County, North Dakota. Permit NACC-1302 includes the 84.24 acres of previously approved covered by Permit NACC-1301 for the mine's shop/office area. Commission staff conducted completeness and technical reviews to ensure that the required information was provided and the mining and reclamation plans meet all applicable requirements. The Reclamation Division sent completeness and technical review letters to the applicant on November 27, 2014, February 19, 2014, March 11, 2014, June 17, 2014, August 25, 2014, and October 3, 2014. Responses to each letter were received and appropriate changes were made to the application to address the concerns that were noted. The applicant provided leases and other documents showing that they have the right to mine the lands where coal removal is proposed and to disturb the surface of other lands in the permit area. The Commission concludes that the application is now accurate and complete.

87 RC-23-348 Filed 12/27/2023 Pages: 11  
Exhibit PSC-3 – Permit to Engage in Surface Coal  
Mining and Reclamation Operations dated 10/22/14  
Public Service Commission

**32 RC-13-850 Filed: 10/22/2014 Pages: 11**  
**Permit to Engage in Surface Coal Mining and  
Reclamation Operations**

The applicant published the required notices in the Hazen Star, Beulah Beacon, and Bismarck Tribune and the Commission sent notices to all surface owners that will be affected by Permit NACC-1302 and to numerous local, state and federal agencies. In addition, advisory committee members were provided copies of the application for their review and comment. No objections or requests for an informal conference were received on this application and no major issues were raised during the review of this application.

The applicant provided evidence that it has the right to disturb the surface of all lands within the proposed permit area. The applicant has these rights based on coal and surface leases, copies of which are included in the application. However, a coal lease was not obtained for Section 31 and therefore the mining plans do not show any coal mining in that section. In addition, the applicant has not obtained the right to mine coal on tracts where the United States of America owns the coal interest. No mining of the federal coal tracts is proposed at this time, only surface disturbances are proposed over these tracts. However, the applicant is planning to apply for federal coal leases in the future. Before overburden and coal removal is allowed to begin on any of the federal coal tracts, a federal coal lease must be issued and the Department of the Interior needs to approve the mine plan covering federal coal tracts that will be mined as required by 30 CFR 746.11. This section of federal regulations states no person shall conduct surface coal mining and reclamation operations on lands containing leased federal coal until the Secretary has approved the mining plans. Special Condition No. 1 attached to the approval of this permit prohibits overburden and coal removal from these tracts until the appropriate leases are issued, the permit is revised to provide the detailed operations and reclamation plans for mining the federal coal tracts, and the Department of the Interior approves the mine plan.

**Finding No. 2. The applicant has demonstrated that reclamation as required by NDCC Chapter 38-14.1 and NDAC Article 69-05.2 can be accomplished under the reclamation plan contained in the permit application [NDCC 38-14.1-21(3)(b)].**

Slightly more than half of the land in the permit area will be mined during the nearly 30-years of mining described in the permit. Additional areas will be disturbed for support activities including soil and overburden stockpiles, access and haulroads, and water management structures. Overburden from the coal removal areas will be removed using a truck/shovel fleet and one large dragline. Reclamation of disturbed areas will be carried out using reclamation procedures that have been successful in the past and satisfy the requirements of the North Dakota law and rules. Reclamation methods and practices that will be used by the applicant have proven effective in the past. Similar lands have been surface mined and successfully reclaimed at the former Indian Head and Glenharold Mines in Mercer County using comparable reclamation methods.

Mining activities will begin in the northeast portion of the permit in late 2014 following permit approval to the extent the construction season allows for the installation of utilities and continued construction of shop/office facilities. The construction of sedimentation ponds, haul roads, and a dragline walkway corridor will occur in 2015 along with topsoil and subsoil removal and stockpiling for the initial dragline pits. The actual mining will begin with dragline box cut pits in 2016. The applicant expects to start coal removal in 2016 with a projected production of 1.7 million tons for the first year of production.

Detailed design plans were provided for sedimentation ponds that will be constructed in the first year of the permit term as required by NDAC 69-05.2-09-09(1)(e). Coal removal from this permit is expected to continue until 2040. After 2016, the coal production rate will be approximately 2.5 million tons per year.

The applicant has demonstrated that sufficient soil materials are available to meet the soil redistribution requirements of NDAC 69-05.2-15 and the revegetation requirements of NDAC 69-05.2-22. The application includes information on sources of non-sodic glacial till material that may be selectively handled to cover sodic spoils or potentially used as other suitable strata to supplement subsoil materials in order to achieve the required respread thickness over sodic spoil material. The actual soil removal volumes and expected respread depths will be calculated annually and presented in an annual soils handling plan prepared by the applicant.

The proposed postmining topography that is shown for the mining that will occur through 2040 meets the requirements of NDCC 38-14.1-24(3) and NDAC 69-05.2-21-02. The average postmining slope proposed for the mining disturbance area is lower than the average pre-mine slope in this area. No thin overburden exists within this permit area. The reclaimed lands will be capable of supporting the premine uses, or higher or better uses, that existed prior to mining. The predominant premining land uses in the permit area are native grassland (6,572 acres) and cropland (198 acres for annual crops and 816 acres for hay crops). Lesser amounts are used for shelterbelts, fish and wildlife habitat (wetlands), woodlands, developed water resources, and roads. The acreage of each postmining land use will be somewhat similar to the premine conditions; however, the cropland acreage will increase by about 430 acres, while hayland will decrease by about 48 acres and the native grassland acreage will decrease by about 405 acres. There is one occupied farmstead located in the permit area. At this time the applicant does not propose to disturb the farmstead or to conduct mining operations within 500 feet of any farm building.

The applicant also evaluated premine lands that are not currently being used for cropland to identify areas with soils, slopes and size suitable to be considered potential cropland. The only potential cropland area identified in the permit area was found in Section 36, T143N, R89W. An equivalent sized area of potential cropland has been delineated on the postmining land use map within a tract that will be returned to native rangeland. The soil respread depth for the potential cropland area will be determined in the annual soils handling plan in a manner to ensure that the premine capabilities are restored as required by NDCC 38-14.1-24(2).

With regard to the reclamation schedule for the first five year permit term, the applicant has requested variances from the contemporaneous reclamation requirements that normally require rough grading to be completed within 180 days of coal removal, NDAC 69-05.2-21-01(2), and that all reclamation efforts through the initial seeding be completed within three years of completion of mining activities, NDCC 38-14.1-24(14). The requested variances described in the application are related to the backfill area required to accommodate pre-benching operations and to incorporate the box cut spoils into the postmining topography. The requested variances from the 180 day grading and three-year seeding requirements have been justified and are being approved by Commission as allowed by NDAC 69-05.2-21-01(2) and NDCC 38-14.1-24(14).

**Finding No. 3. Based on the assessment of the probable cumulative impacts of all anticipated mining in the area, the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area [NDCC 38-14.1-21(3)(c)].**

An assessment of the probable cumulative hydrologic impacts of all anticipated mining in the area has been made as required by NDCC 38-14.1-14(1)(o). The Commission finds that the proposed operation has been designed to maintain the quantity, quality, and hydrologic regime of surface and ground water systems in the area. The cumulative effects of all existing and proposed mining operations should not damage the hydrologic balance outside the permit area. The detailed cumulative hydrologic impact assessment is on file with Permit NACC-1302 in the Commission's offices.

**Finding No. 4. Lands within the permit area are not within an area designated unsuitable for surface coal mining operations, nor within areas under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations [NDCC 38-14.1-21(3)(d)].**

None of the lands in Permit NACC-1302 have been designated unsuitable for surface coal mining operations pursuant to NDCC 38-14.1-05, nor are they within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations.

**Finding No. 5. The proposed mining operations will not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally sub-irrigated or materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors [NDCC 38-14.1-21(3)(e)].**

Based on an examination of the geologic and geomorphic characteristics, soils, land use, and the water quality and quantity of streams occurring within or adjacent to the permit area, it has been determined that there are no alluvial valley floors within or adjacent to the permit area. In addition, portions of Coyote Creek near the permit area were previously evaluated for alluvial valley floor potential and Commission staff determined that this creek does not have the characteristics to be considered an alluvial valley floor. Detailed alluvial valley floor investigation reports and determinations are on file with the Commission.

**Finding No. 6. In cases where the mineral estate has been severed from the surface estate, the applicant complied with the requirements of NDCC 38-18 [NDCC 38-14.1-21(3)(f)].**

The applicant included copies of the necessary leases and other documents in the permit application demonstrating compliance with the North Dakota Surface Owner Protection Act, North Dakota Century Code Chapter 38-18. This documentation included copies of notice that was given to the surface owners before the application was filed with the Commission.

**Finding No. 7. Lands within the permit area are not subject to the prohibitions or limitations of NDCC 38-14.1-07 except for areas that receive specific approvals after complying the applicable review procedures of NDAC Chapter 69-05.2-04 [NDAC 69-05.2-10-03(6)(a)].**

Lands in the permit area are:

- a) Not on any lands within the boundaries of units of the North Dakota Park System, the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the National Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act, and national recreation areas.
- b) Not on any federal lands within the boundaries of any national forest.
- c) Not within 300 feet of any publicly owned park or places included in the State Historic Sites Registry or the National Register of Historic Places. A cultural resource survey and inventory of the area being permitted was conducted. All sites that were identified have been properly tested and evaluated. Several historic and prehistoric sites were identified and several prehistoric sites have been determined to be eligible for listing on the National Register of Historic Places. The field work for mitigation of one of the eligible sites, 32ME2350, was completed in 2013 and the mitigation report has been accepted by the State Historical Society and the site has been cleared for disturbance. All other eligible sites will be either avoided or mitigated. A cultural resource management plan and data recovery plan was developed for the remaining eligible sites with input from the State Historical Society and Native American consultation from the Three Affiliated Tribes. The cultural resource management plan was approved by the State Historical Society in a letter to Coyote Creek Mining Company dated May 27, 2014. Coyote Creek Mining Company has committed to reporting, testing and mitigating, if necessary, any previously unrecorded archeological, cultural, or historical materials that may be discovered as a result mining related activities.
- d) Within 100 feet of the outside right-of-way line of public roads. However, no disturbances will occur within 100 feet of the outside right-of-way of any public road unless the road authority, Mercer County, has temporarily vacated the road right-of-way or granted permission to conduct mining operations within 100 feet of the road right-of-ways. The approvals previously obtained for public roads within the Permit NACC-1301 area have been included in Permit NACC-1302. The applicant will request additional road right-of-way closures in the future. Special Condition No. 2 is attached to the permit requiring Coyote Creek Mining Company to provide the Commission with copies of the road authority's approval documents within 30 days of the approval date and include the written findings made by the road authority. North Dakota Administrative Code Section 69-05.2-04-01.3 requires the Commission to make a written finding on protecting the interests of the public and affected landowners if this is not included in the road authority's approval process.
- e) Includes an occupied dwelling that is part of a farmstead belonging to Casey and Julie Voigt in the SW $\frac{1}{4}$  of Section 31, T143N, R88W. However, coal mining

operations will not occur within 500 feet of the occupied dwelling, or within 500 feet of any farm building. In the future the applicant may exercise an option in the lease obtained from the building owners to purchase the buildings. No other occupied buildings are located within the permit area.

- f) Not within 300 feet of any public building, school, church, community, or institutional building.
- g) Not within 100 feet of any cemetery.

**Finding No. 8. With respect to prime farmland within the permit area, the post-mining land use for the pre-mining prime farmland will be cropland, the reclamation plan was reviewed by the Natural Resources Conservation Service (NRCS) and their suggestions were considered, operations will be conducted in compliance with NDAC 69-05.2-26 and NDCC 38-14.1, and the applicant has the technological capability to restore the productivity on reclaimed lands [NDAC 69-05.2-10-03(6)(c) and NDCC 38-14.1-21(6)].**

The applicant included a prime farmland reclamation plan with the submittal of the original permit that satisfies the requirements of NDAC 69-05.2-09-15 and the performance standards of NDAC Chapter 69-05.2-26. The postmining land use for the prime farmlands that will be disturbed is cropland. The prime farmland tracts in the permit area will be affected by associated disturbances only, not actual mining. Based on the type of disturbances no separate handling for soils from prime areas is planned. The NRCS provided review comments on the application and did not object to mixing prime and nonprime soils provided the selective handling plan for soil material as outlined in the application is followed. The selective soils handling plan in the permit application identifies soils and soil depths suitable for salvage and use in reclamation. The prime farmland areas will be reclaimed in the same location, with the same topography that existed prior to disturbance. The applicant is responsible for replacing soil materials and managing reclaimed lands as necessary to meet productivity standards. The reclamation methods that will be used by the applicant for associated disturbance areas have been proven to be successful in the past at other mines. Therefore, the Commission finds the technological capability exists to restore the productivity of reclaimed land to a level that is equal to or greater than non-disturbed prime farmland in the surrounding area under equivalent management practices.

**Finding No. 9. The operations will not affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats [NDAC 69-05.2-10-03(6)(d)].**

Surface coal mining and reclamation activities will not affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats. No federal threatened or endangered species or designated critical habitats were observed within or contiguous to the proposed permit area.

The permit area is located in the whooping crane (a listed species) migration corridor where mining and reclamation activities “may affect, but are not likely to adversely affect” this species. The likelihood of whooping cranes occurring in or adjacent the permit area

is very low because desirable stop-over roosting habitat does not exist in the area. Whooping crane feeding sites area often found adjacent to roosting sites. Wetlands in and adjacent to the permit area are primarily associated with springs, seeps and ephemeral linear drainages. The permit and adjacent area does not contain any large (>5 acres) seasonal or more permanent wetlands and Coyote Creek is a highly incised perennial stream that ranges from 15 to 50 feet wide. Thus, the Commission finds that suitable whooping crane wetland stop-over habitat does not exist within or adjacent to the permit area. The U.S. Fish and Wildlife Service was consulted during the wildlife inventory process and concurred that there appeared to be limited suitable habitat for whooping cranes in the permit and adjacent area. (Refer to the comments in the U.S. Fish and Wildlife Service's July 16, 2012 letter regarding the applicant's pre-mine fish and wildlife inventory plan.)

The permit and adjacent area does not contain habitat for other listed species including the Black-footed ferret, Pallid Sturgeon, Interior Least Tern, Piping Plover or Western Prairie Fringed Orchid. The Gray Wolf could conceivably be an occasional migrant visitor to western North Dakota and the permit area.

Specific surveys were completed during baseline wildlife inventory for the Dakota skipper butterfly and Sprague's pipit which are Candidate species to the Endangered Species Act. Sprague's pipits were observed at eleven locations during the baseline wildlife survey in 2012, while none were observed in 2013. The Dakota skipper was not sighted on or near the permit area during 2012 and 2013 surveys. Suitable habitat obviously exists in the permit area for Sprague's pipit and it is unlikely that suitable habitat exist in the area for the Dakota Skipper. Surveys will continue to be conducted for these species and the Northern Long-eared Bat, which is also a Candidate species, if it is determined that the isolated woody draws in the permit area are suitable habitat for this species. The permit and adjacent area does not contain riparian forest or hibernacula so it is unlikely that the suitable habitat exists for Northern Long-eared Bat. Suitable habitat does not exist for the other Candidate species which includes Poweshiek Skipperling, Rufa Red Knot and Greater Sage Grouse.

**Finding No. 10. The applicant will be required to pay all reclamation fees required by 30 CFR subchapter R [NDAC 69-05.2-10-03(6)(e)].**

Since no mining has occurred at the Coyote Creek Mine, the applicant has not yet been required to pay the reclamation fees required by 30 CFR subchapter R. However, a standard condition is attached to the permit that will require the payment of these fees when coal is mined. The Office of Surface Mining's Applicant Violator System office in Lexington, Kentucky, was queried to verify that all fees have been paid by mining companies affiliated with the applicant.

**Finding No. 11. The applicant has satisfied requirements for approving cropland as a post-mining land use [NDAC 69-05.2-10-03(6)(f)].**

The applicant has satisfied the requirements for approval of a cropland post-mining land use under NDAC 69-05.2-22-01. Areas reclaimed to cropland will either be seeded directly to crops commonly grown in the area or to a tame grass/legume pre-cropland

mixture. The post-mining topography and soils are suitable for cropland in the areas that will be cropped.

**Finding No. 12. No existing structures will be used to support mining activities within the permit area and the requirements of NDAC 69-05.2-09-04 do not apply to the permit area [NDAC 69-05.2-10-04].**

No existing structures in the permit area will be used to support mining activities. Design information for the support structures being constructed in Permit NACC-1301 is also included in this permit.

**Finding No. 13. No drill holes, boreholes or wells will be retained for other uses [NDAC 69-05.2-14-03].**

The applicant has not proposed to retain any drill hole, borehole, or well for other uses.

**Finding No. 14. No spoil in the permit area is known to cause toxic mine drainage [NDAC 69-05.2-16-11].**

The chemical characteristics of the overburden materials in the permit area are such that they do not produce toxic mine drainage. The analysis of overburden samples included in the permit application do not reveal any substances that would cause any chemical reactions or physical effects that are likely to kill, injure, or impair biota commonly present in the area.

**Finding No. 15. The applicant will not conduct mining activities within or near perennial and intermittent stream channels that violate applicable water quality standards or adversely affect the quantity and quality of the water and other environmental resources of the stream [NDAC 69-05.2-16-20].**

Mining activities are proposed within or near streams that have been identified as intermittent and perennial streams. The dragline walkway/access road that will cross Coyote Creek, a perennial stream, in one location and other associated disturbances will be within one hundred feet of Coyote Creek at another. Both areas are located in the S $\frac{1}{2}$  of Section 30. In addition, a coal haul road will cross Coyote Creek in the SW $\frac{1}{4}$  of Section 19. No disturbances are planned for the remainder of the perennial stream located within the proposed permit area. No intermittent streams were identified in the permit area.

As required by subsection 1 of NDAC 69-05.2-16-20, the Commission sent a copy of the updated permit application to the State Engineer and North Dakota Department of Health on September 18, 2014 to specifically review and comment on the applicant's plan to conduct mining activities within one hundred feet of perennial and intermittent streams. Operation plans in the permit specifically discuss the associated mining disturbances that will take place within one hundred feet of the perennial stream. No concerns or objections to the proposed disturbances were received from the State Engineer or Department of Health. The buffer zones and areas where associated disturbance will occur within one hundred feet of the perennial stream are depicted on the pit layout and facilities map. The Commission finds that the proposed disturbances

will not cause or contribute to the violation of applicable state and federal water quality standards and will not adversely affect the water quality of these intermittent and perennial streams. All runoff from disturbances planned within one hundred feet of the perennial stream will be controlled through the use of water management structures and best management practices. The applicant has made a commitment to properly mark the designated stream buffer zones that will not be disturbed to exclude mining related disturbance as required by NDAC 69-05.2-16-20(2).

**Finding No. 16. The applicant does not propose to use any experimental practices in the federal coal tract area [NDAC 69-05.2-27-02].**

There are no plans included in the application to use any experimental practices that may be allowed under NDAC 69-05.2-27-02.

**Finding No. 17. The applicant does not control and has not controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations [NDAC 69-05.2-10-03(4)].**

Commission records, and those in the Office of Surface Mining's Applicant Violator System, do not show that the applicant, nor any affiliated company, controls and has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of NDCC 38-14.1 or of other states' laws that are based on P.L. 95-87 (the Federal Surface Mining Control and Reclamation Act), of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of these laws.

**Finding No. 18. Neither the applicant, nor any affiliated companies, have unabated violations or unpaid civil penalties [NDAC 69-05.2-10-03(1)].**

Commission records, and those in the Office of Surface Mining's Applicant Violator System, do not indicate that the applicant, nor any affiliated companies, have any unpaid civil penalties or unabated violations of NDCC 38-14.1 or any other federal or state laws, rules, or regulations pertaining to air or water environmental protection. Staff at the North Dakota Department of Health also verified that the applicant has no unabated violations with regard to air and water environmental protection standards.

**Finding No. 19. A performance bond in the amount of \$4,648,285 is sufficient for the surface coal mining operations proposed in the first bond increment for this permit [NDAC 69-05.2-12-07].**

The Commission has determined that a performance bond in the amount of \$4,648,285 is sufficient at this time to cover the required reclamation, restoration, and abatement work for the disturbances proposed in the first increment area in Permit NACC-1302. The first bond increment covers 2,088.8 acres and includes all disturbances that are expected to occur before January 1, 2016. A surety bond in the amount of \$5,000,000 has been filed with the Commission for this first bond increment.


Subject to the right of any person with an interest that is or may be adversely affected to request a formal hearing under NDCC 38-14.1-30, **Surface Coal Mining Permit Number NACC-1302** is hereby granted to **Coyote Creek Mining Company, L.L.C.** to engage in surface coal mining and reclamation operations, on the following described areas subject to the applicable requirements of the original permit and conditions, Chapter 38-14.1 of the North Dakota Century Code, and the rules promulgated there under. (Attached is a copy of the metes and bounds description of lands included in the permit area.)

**LOCATION**

<u>MINE</u>	<u>ADDRESS</u>	<u>SECTIONS</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>COUNTY</u>
Coyote Creek	Beulah, ND	6 and 7	142N	88W	Mercer
		1, 2, 3, 11, and 12	142N	89W	Mercer
		19, 30 and 31	143N	88W	Mercer
		23, 24, 25, 26, 27, 34, 35, and 36	143N	89W	Mercer

**Total – 8,091.511 Acres**

**PUBLIC SERVICE COMMISSION**

  
 Randy Christmann  
 Commissioner

  
 Brian P. Kalk  
 Chairman

  
 Julie Fedorchak  
 Commissioner

Section 1.2.2 – Metes and Bounds Description for Entire Permit Area

A tract of land for a mining permit located in T142N and T143N, R88W and R89W, of the 5th P.M., Mercer County, North Dakota.

All bearings and distances are based on the North Dakota State Plane Coordinate System, South Zone, NAD 83.

All bound calls supersede any metes within this description.

Described as follows:

Beginning at the northeast corner of section 30, T143N, R88W;  
thence S 00°46'11" W a distance of 2639.34', to the east 1/4 corner of said Section;  
thence S 00°54'16" W a distance of 2639.62', to the southeast corner of said Section 30;  
thence S 00°54'16" W a distance of 2639.61', to the east 1/4 corner of Section 31, T143N, R88W;  
thence S 00°54'16" W a distance of 2639.61', to the southeast corner of said Section 31;  
thence S 00°54'00" W a distance of 2649.62', to the east 1/4 corner of Section 6, T142N, R88W;  
thence S 00°47'22" W a distance of 2638.46', to the southeast corner of said Section 6;  
thence S 01°09'27" W a distance of 1308.63', to the N 1/16 corner of Section 7, T142N, R88W;  
thence N 88°59'36" W a distance of 2627.51', to the CN 1/16 corner of said Section 7;  
thence N 88°57'43" W a distance of 2627.09', to the N 1/16 corner of said Section 7;  
thence N 89°18'06" W a distance of 2622.16', to the CN 1/16 corner of Section, 12, T142N, R89W;  
thence N 89°12'46" W a distance of 2625.09', to the N 1/16 corner of said Section 12;  
thence N 89°02'25" W a distance of 2625.57', to the CN 1/16 corner of Section 11, T142N, R89W;  
thence N 89°05'11" W a distance of 2613.43', to the N 1/16 corner of said Section 11;  
thence N 01°01'21" E a distance of 1315.76', to the northwest corner of said Section 11;  
thence N 88°58'19" W a distance of 2612.33', to the south 1/4 corner of Section 3, T142N, R89W;  
thence N 00°57'05" E a distance of 5265.85', to the north 1/4 corner of said Section 3;  
thence N 00°48'24" E a distance of 5265.22', to the north 1/4 corner of Section 34, T143N, R89W;  
thence N 00°51'14" E a distance of 5279.28', to the north 1/4 corner of Section 27, T143N, R98W;  
thence S 88°55'24" E a distance of 2625.60', to the northeast corner of said Section 27;  
thence N 00°48'41" E a distance of 1316.90', to the S 1/16 corner of Section 23, T143N, R89W;  
thence S 89°19'20" E a distance of 2623.93', to the CS 1/16 corner of said Section 23;  
thence N 00°49'38" E a distance of 1317.90', to the C 1/4 corner of said Section 23;  
thence S 89°20'39" E a distance of 2625.40', to the east 1/4 corner of said Section 23;  
thence S 89°14'25" E a distance of 2633.88', to the C 1/4 corner of Section 24, T143N, R89W;  
thence N 00°54'35" E a distance of 1321.07', to the CN 1/16 corner of said Section 24;  
thence S 89°13'35" E a distance of 2636.56', to the N 1/16 corner of said Section 24;  
thence N 00°55'56" E a distance of 1320.44', to the northeast corner of said Section 24;  
thence S 89°00'24" E a distance of 2551.86', to the north 1/4 corner of Section 19, T143N, R88W;  
thence S 00°28'38" W a distance of 5276.35', to the south 1/4 corner of said Section 19;  
thence S 89°07'41" E a distance of 2620.46', to the southeast corner of said Section 19, also being the point of beginning.

Said tract of land contains 8,091.511 acres.