

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

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

FROM: ^{JE} Jonathan Emmer, ^{MJ} Monty Johnson, and ^{GW} Guy Welch

DATE: September 27, 2024

SUBJECT: Application for Revision 13 to Permit NACC-1302 held by the Coyote Creek Mining Company, Case No. RC-24-244.

On June 18, 2024, The Coyote Creek Mining Company filed the application for Revision 13 to Surface Coal Mining Permit NACC-1302. Revision 13 identifies the next five-year coal removal areas and addresses items that were identified as requiring updating or modification by the Reclamation Division during a pre-renewal review of the permit. This revision updates introductory, legal and business entity information, identification of interests and rights of entry, surface water hydrology, operations and reclamation plans, worst case reclamation cost estimate, surface water management, fish and wildlife resources, post-mining land use, and revegetation sections of the permit. The Reclamation Division has completed its review of this revision application and respectfully recommends it be approved.

Coyote Creek Mining Company applied for this revision and corresponding Renewal 2 to the permit since mining is scheduled to continue in the existing permit area until 2040 as shown on the extended mining plan map in the permit. The surface and coal ownership information for the permit and adjacent area, and related lease information were updated as necessary. The Pit Layout and Facilities Map was revised to show coal removal subareas through the next permit term and the coal production schedule was updated accordingly. The reclamation schedule was updated to show where reclamation is currently being delayed and 19.1 acres mined in 2021 is being added to variance area two. Areas that have been reclaimed were removed from the variance area map. The surface water monitoring plan was revised to deactivate monitoring sites downstream from sediment ponds. The fish and wildlife resource section was revised to include up-to-date threatened and endangered species information. The post-mining land use and revegetation section was updated to clarify the timing and locations of planned woodland plantings and information regarding proposed native grassland reference areas was included in the permit.

This revision was considered a significant revision application and was subject to the public notice requirements. Coyote Creek Mining Company has submitted affidavits of publication of the newspaper notices. We notified the appropriate agencies, affected landowners, and the advisory committee members.

On August 22, 2024, Reclamation Division staff met with landowner Casey Voigt and their attorney, Derrick Braaten, to discuss Revision 13 and Renewal 2. On August 26, 2024, the Reclamation Division received written comments from the Voigts regarding the revision and renewal applications. Their comments discussed dampened public participation following Commission commentary during a July 8, 2024 meeting regarding a motion for granting attorney fees in PSC Case No. RC-23-348 (SPGM respread depths); the final location of a low

maintenance public road; proposed native grassland reference areas; and the graded spoil testing depth outlined in Policy Memorandum No. 17. The Reclamation Division responded to Voigt's comments on September 25, 2024. Additionally, the Voigts and the Coyote Creek Mine have resumed discussions regarding the proposed native grassland reference areas and the final location of the public road following their comment letter.

An adequate performance bond is currently in effect for the worst-case reclamation estimate, which was updated as part of Revision 13. This permit is covered by a surety bond totaling \$25,219,975.

Special Condition 6 is being added to Permit NACC-1302, which states that Coyote Creek Mining Company, L.L.C. must provide the Commission with copies of Mercer County road authority approval documents to close or relocate County Road No. 13 and other approval documents to conduct surface coal mining activities within one hundred feet of the outside right-of-way of County Road No. 13 as required by NDAC 69-05.2-04-01.3(4). These documents must be provided to the Commission within thirty days from the road authority's approval date and include the written findings made by the road authority. If the road authority did not provide for a public comment period and make a written finding as part of its approval process as specified in subsection 3 of North Dakota Administrative Code Section 69-05.2-04-01.3, no mining activities may be conducted within one hundred feet of the outside right-of-way of County Road No. 13 until the Commission provides public notice and makes the written finding.

Additionally, Special Condition 7 is being added to Permit NACC-1302, which states that Coyote Creek Mining Company, L.L.C. must provide detailed plans for relocated County Road No. 13 and haul roads and corridors passing over or under existing or relocated County Road No. 13. These detailed plans must be included in Permit NACC-1302 with a revision application.

Attached for your consideration at the October 9, 2024 Commission meeting is the proposed motion, revision approval form, special permit conditions, and the revision approval notice that we will be publish in the appropriate newspapers following approval.