

NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Coyote Creek Mining Co., L.L.C.)	
Revision 13, Permit NACC-1302)	Case No. RC-24-244
Renewal 2, Permit NACC-1302)	Case No. RC-24-245
Applications)	

**RESPONSE TO CASEY AND JULIE VOIGT’S MOTION TO
CONTINUE FORMAL HEARING**

[1.] Coyote Creek Mining Company, L.L.C. (“CCMC”) submits this response to Casey and Julie Voigts’ (the “Voigts”) Motion to Continue Formal Hearing in the above-captioned matters.

[2.] For months, the Voigts have contested CCMC’s applications to revise and renew Permit NACC-1302. On August 26, 2024, the Voigts filed their objections to the applications. In those objections, the Voigts again slandered CCMC and went so far as to accuse the Commission and its staff of bias. Case No. RC-24-244, Dkt. No. 18. And not content, the Voigts, or their counsel, made what can fairly be construed as threats. *Id.*, at p. 6 (“the pressure release valve . . . has been plugged. Now the pressure builds” – towards what, the reader is left to guess). Both the Reclamation Division and CCMC responded on September 25, 2024, rebutting each of the Voigts’ objections. *See, e.g.*, Case No. RC-24-244, Dkt. No. 30; Case No. RC-24-244, Dkt. No. 31.

[3.] The Voigts were undeterred, and requested a formal hearing on November 15, 2024, which was on day thirty of the thirty day window to request such a hearing. Case No. RC-24-244, Dkt. No. 45. In that request, the Voigts identified that “[i]ssues to be raised at the formal hearing include reclamation practices, testing and sampling practices, and reclamation success, as well as general review of the permit and concerns of the landowners hosting this Mine on their property.” *Id.* On

November 20, 2024, the Commission issued its Notice of Formal Hearing, setting the formal hearing for December 13, 2024. Case No. RC-24-244, Dkt. No. 48.

[4.] On November 21, 2024 the Chair requested that the Voigts file a “clear and concise statement of the claims, including non-compliance or violation of applicable statutes or rules, and relief sought” because the Voigts’ hearing request did “not meet these specifications.” Case No. RC-24-244, Dkt. No. 51. The letter indicates that the Voigts have been asked for similar particularity in previous hearings that they requested before the Commission. *Id.* On November 26, 2024, the Voigts responded, claiming the Chair had no authority to request more specificity than the conclusory issues that the Voigts already identified and faulting the Chair for having the audacity to ask for more information in “the lead up to the Thanksgiving holiday.” Case No. RC-24-244, Dkt. No. 53. On November 27, 2024, the Chair responded with specific authority for the Chair’s request and asked the Voigts to “communicate a date by which the Commission can expect an updated response.” Case No. RC-24-244, Dkt. No. 54.

[5.] The Voigts have since been silent. They never responded to the Chair’s request for further specificity. They never responded to multiple requests to set a prehearing conference to discuss issues for disposition at the formal hearing, procedure, exhibits, and other routine matters. *See, e.g.,* Ex. 1 (Johnson Email to Parties); Ex. 2 (Wetzel Email to Parties). Instead, three days before the formal hearing, and without consulting CCMC, the Voigts file the current motion.

[6.] The Voigts request a continuance until such time as “all or a majority of the commissioners can be present.” Case No. RC-24-244, Dkt. No. 56, at p. 2. The Voigts have known for almost a week that not all Commissioners would be present at the formal hearing. Case No. RC-24-244, Dkt. No. 58. Yet they said nothing until the eve of the formal hearing. During that time, Commission staff and CCMC have been diligently preparing for the hearing, and multiple

individuals have rearranged their personal and professional schedules to attend the hearing. That the Voigts sat on their motion as long as they did is reason alone to deny this motion. *See* N.D.A.C. § 69-02-04-03 (“continuances may be granted by the commission for good cause” upon a “motion [that] must be filed as far in advance of the date fixed for the hearing as possible.”). The Voigts are well aware of the statutory and regulatory timelines surrounding formal hearings.

[7.] The procedural statute cited by the Voigts does not require a continuance. Unaddressed by the Voigts, N.D.C.C. § 49-01-07 only says that a “majority of the commission shall constitute a quorum for the transaction of business.” (emphasis added). The Voigts cite no authority under which holding a formal hearing under N.D.C.C. ch. 38-14.1 constitutes the transaction of business. Instead, that transacting of business will occur at the meeting when the Commission votes on CCMC’s applications. *See* N.D.C.C. § 49-01-06. That is why hearings and meetings before the Commission are separate. *Compare* N.D.A.C. ch. 69-02-04 *with* N.D.A.C. ch. 69-02-08.

[8.] CCMC has repeatedly detailed the Voigts’ gamesmanship. What has occurred in these proceedings is just the latest episode in the Voigts’ decade-long pattern of harassment. Instead of engaging in the pre-hearing process in good faith so that all parties can fairly and efficiently address their concerns, the Voigts apparently want a formal hearing by ambush. But instead of seizing on the formal hearing date provided by the Commission, the Voigts want to string this process out for as long as possible by using inapplicable procedure as pretext for delay. That is not the good cause required for a continuance under N.D.A.C. § 69-02-04-03.

[9.] CCMC is ready to proceed at the December 13, 2024 hearing. The Commission should deny the Voigts’ attempt to delay the proceeding any further. *See* N.D.A.C. § 69-02-04-03.

Dated this 11th day of December, 2024.

/s/ Wade C. Mann

WADE C. MANN (Bar ID No. 05871)

wmann@crowleyfleck.com

CROWLEY FLECK PLLP

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

100 West Broadway, Suite 250

P.O. Box 2798

Bismarck, North Dakota 58502

(701) 223-6585

From: Wade Mann
Sent: Monday, December 9, 2024 8:37 AM
To: Johnson, Brian L.; Hogan, Hope L.
Cc: Zach Eiken; Derrick Braaten
Subject: RE: Prehearing Conference

I'm available for a prehearing conference any time on Wednesday or any time Thursday other than 11am-12pm.

Wade Mann
100 West Broadway, Suite 250
Bismarck, ND 58501
P.O. Box 2798
Main: 701.223.6585 | Fax: 701.222.4853
Direct: 701.224.7530
With Offices in Montana, North Dakota, and Wyoming Billings Bismarck Bozeman Butte Casper Cheyenne Helena
KalisPELL Missoula Sheridan Williston

-----Original Message-----

From: Johnson, Brian L. <brljohanson@nd.gov>
Sent: Monday, December 9, 2024 7:31 AM
To: Hogan, Hope L. <hlhogan@nd.gov>
Cc: Wade Mann <wmann@crowleyfleck.com>; Zach Eiken <zeiken@crowleyfleck.com>; Derrick Braaten <derrick@braatenlawfirm.com>
Subject: Prehearing Conference

This message was received from an external email account. Please use caution when opening messages or links from unknown senders.

All,

I am wondering if there would be a chance for a prehearing conference Wednesday or Thursday? It would be nice to have an idea of the issues to be discussed so that I could prepare exhibits and ensure that I have the witnesses needed to testify. I have nothing on my schedule for either Wednesday or Thursday, I will be traveling this afternoon and have a hearing in Watford city tomorrow and unsure of when I will be back Tuesday. I should be able to respond via email.

Thanks in advance.

Brian Johnson
Special Assistant Attorney General
NORTH DAKOTA PUBLIC SERVICE COMMISSION

600 E Boulevard Ave. Dept 408 | Bismarck, ND 58505-0480
p: 701-328-2407 | https://url.us.m.mimecastprotect.com/s/kRAVCxklZns1o3xJu8fBly_lpy?domain=psc.nd.gov

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From: Wetzel, Louise M. <lmwetz@nd.gov>
Sent: Tuesday, December 10, 2024 11:43 AM
To: Johnson, Brian L.; Wade Mann; Zach Eiken; Derrick Braaten
(derrick@braatenlawfirm.com)
Subject: RE: Coyote Creek

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I have scheduled a prehearing telephone conference on December 11, 2024, at 1:00 p.m.

I will email a notice this afternoon with conference call information

Louise

From: Johnson, Brian L. <brljoh@nd.gov>
Sent: Monday, December 9, 2024 9:25 AM
To: Wetzel, Louise M. <lmwetz@nd.gov>; Wade Mann <wmann@crowleyfleck.com>; 'zeiken@crowleyfleck.com' <zeiken@crowleyfleck.com>; Derrick Braaten (derrick@braatenlawfirm.com) <derrick@braatenlawfirm.com>
Subject: RE: Coyote Creek

I have an open schedule both days so either works for me.

Brian Johnson
Special Assistant Attorney General
NORTH DAKOTA PUBLIC SERVICE COMMISSION

600 E Boulevard Ave. Dept 408 | Bismarck, ND 58505-0480
p: 701-328-2407 | <https://www.psc.nd.gov>

From: Wetzel, Louise M. <lmwetz@nd.gov>
Sent: Monday, December 9, 2024 8:42 AM
To: Johnson, Brian L. <brljoh@nd.gov>; Wade Mann <wmann@crowleyfleck.com>; 'zeiken@crowleyfleck.com' <zeiken@crowleyfleck.com>; Derrick Braaten (derrick@braatenlawfirm.com) <derrick@braatenlawfirm.com>
Subject: Coyote Creek
Importance: High

Good Morning

ALJ Hope Hogan would like to schedule a prehearing telephone conference in the matter of Coyote Creek Mining and Casey and Julie Voigt to discuss the issues, procedure, etc. for the hearing scheduled on Friday, December 13, 2024.

ALJ Hogan is available

December 11

December 12 – after 9:30 a.m.

Please let me know your availability and I will schedule the prehearing conference.

Thank you
Louise

Louise Wetzel
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lmwetz@nd.gov

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