

September 25, 2024

Via Electronic Mail & U.S. Mail

Mr. Steve Kahl
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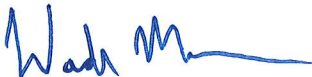
In re: Casey and Julie Voigt v. Coyote Creek Mining Company, L.L.C.
PSC Case Nos. RC-24-244 & RC-24-245
Our File No. 021919-000026

Dear Mr. Kahl:

Enclosed for filing please find Coyote Creek Mining Company, L.L.C.'s Response to Casey and Julie Voigt's August 26, 2024 Objections, 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)
Chris Friez (via email)

NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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|----------------------------------------|---|---------------------------|
| 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 AUGUST 26, 2024 OBJECTIONS

[1.] Coyote Creek Mining Company, L.L.C. (“CCMC”) submits this response to Casey and Julie Voigts’ (the “Voigts”) August 26, 2024 objections (the “Voigt Comments”) in the above-captioned matters.

INTRODUCTION

[2.] CCMC has always been and remains committed to being a responsible mine operator that works hand in hand with landowners to ensure that all parties’ interests are protected. In that regard, CCMC is always open to landowners contacting the North Dakota Public Service Commission (the “Commission”) or using the administrative processes, both informal and formal, available through the Commission to address their concerns.

[3.] A landowner, or their counsel, however, may not abuse that process with frivolous allegations and objections that endlessly consume both the Commission and CCMC’s limited resources, and needlessly increase costs to ratepayers. N.D.C.C. § 38-14.1-36; N.D.A.C. § 69-05.2-01-07. That is exactly what the Voigts have done in their decade-long crusade to forestall development of CCMC’s mine. CCMC foresees no end to their campaign unless at some point there are consequences when the process is misused in an effort to harass, embarrass, or gain leverage against the mine. Case No. RC-19-189, Dkt. No. 185; Case No. RC-19-190, Dkt. No. 201; Case No. RC-23-348, Dkt. No. 153. The Voigt Comments are no exception.

[4.] Ironically, the Voigts attempt to play the victim and claim to be the subject of “the vitriolic cries of harassment from CCMC” and that “no matter what they do, CCMC will cry foul, frivolous, and harassment.” Voigt Comments, at p. 1. CCMC has not once initiated litigation or other proceedings against the Voigts, but the Voigts have initiated countless proceedings against CCMC, the Commission, Mercer County, and other related parties, including the Coyote Station Owners. CCMC has only defended itself, pointing to the facts and the record to show the baselessness of their allegations, which the Voigts have on multiple occasions conceded when the time comes to defend them with evidence and the law. All of that was on purpose, as the Voigts’ counsel explained some of these filings are “simply what lawyers do when they get paranoid and scared.” Case No. RC-23-348, Docket No. 15 at ~00:08:35. Rotely filing things without making specific accusations and before evidence is gathered should never be done lightly. It has real world consequences, including endless litigation and multiple hearings that drain the resources of CCMC and the Commission concerning baseless allegations that forever remain in the public record.

[5.] Here, the Voigt Comments are a mix of old and new which continue the same repeated tactic – using Commission processes to slander both CCMC and other mining companies in public filings. However, this time they take their scorn one step further and cast aspersions directly on the Commission and its staff. Voigt Comments, at p. 6 (complaining about what the Voigts and their counsel perceive as “the bias inherent in these proceeding [sic].”). They claim they are barred from raising issues more than one time, no matter if they bring new evidence or not. What they fail to mention is that on those occasions where they attempt to re-litigate issues or raise prior issues, they use the same evidence they used before and present nothing new. And not content, the Voigts, or their counsel, make what can fairly be construed as threats. *Id.* (“the pressure release valve . . . has been plugged. Now the pressure builds” – towards what, the reader is left to guess.)

The Voigt Comments complain that the “Commission appears to have determined that there is credibility to CCMC’s assertions that the Voigts and their counsel have brought forth meritless issues,” *Id.* at p. 2, – an objective observer would likely agree the Commission is correct in making such a determination, if in fact it has. Looking past the concerning rhetoric, the objections raised in the Voigt Comments fail for the same reason every one of their previous challenges to CCMC’s proposed actions also failed—neither the facts nor the law support the assertions.

DISCUSSION

[6.] The Voigt Comments object to CCMC’s applications currently pending before the Commission. The Application for Renewal 2, Permit NACC-1302 in Case No. RC-24-245 seeks a renewal of Permit NACC-1302 for an additional five-year period. The Application for Revision 13, Permit NACC-1302 in Case No. RC-24-244 relatedly identifies the coal removal area to be mined during the proposed five-year permit term extension. The Voigt Comments take issue with each of those applications.

I. The Voigts are wrong about what Section 4.3.1 requires and reference areas about which they complain are not yet final.

[7.] The Voigt Comments first object by claiming that they have the right “to choose the reference areas” and the Commission is allowing CCMC “to shirk its responsibility[ies] again” because the Voigts have not chosen the reference areas. Voigt Comments, at p. 2. Basic facts and reality, both of which are absent from the Voigt Comments, dispel this objection.

[8.] From the outset, the Voigt Comments wrongly suggest that they have the unilateral authority to choose reference areas. Section 4.3.1, in accordance with the Commission’s April 15, 2015 Order in Case No. RC-13-850 (the “April 2015 Order”), simply requires that CCMC consult “with Casey Voigt when selecting and establishing management practices for the reference areas on undisturbed native grasslands that will be used when demonstrating reclamation success

on reclaimed native grassland that Mr. Voigt owns”; it requires nothing more and provides the Voigts with no further right. Case No. RC-13-850, Docket No. 125. Nowhere does it provide that the Voigts get to choose the reference areas. That is why the Voigt Comments seemingly cannot pick a direction as to what they think Section 4.3.1 requires, as the Voigt Comments on the one hand say they get to “choose reference areas,” Voigt Comments, at p. 3, but on the other hand say it “was agreed that the Voigts would be consulted” on the reference areas. *Id.* at p. 2. Contrary to their suggestion, the Voigts have no unilateral authority. The reference areas have been and remain a collaborative process between CCMC and the Voigts.

[9.] That point is lost in the Voigt Comments’ other allegations. CCMC has preliminarily picked proposed reference areas. But they are just that—preliminary proposed reference areas. Those reference areas are not final. Absent from the Voigt Comments is any mention of the true facts: CCMC has been in communication with Casey Voigt regarding the reference areas. The Voigt Comments also fail to mention that Casey Voigt has represented that he is seeking third-party help to review the proposed reference areas and CCMC is waiting on further information from Mr. Voigt in this regard. It is thus false to suggest, as the Voigt Comments do, that there has been any final and/or unilateral decision on this issue. CCMC hopes that the ongoing discussions will be able to resolve this objection.

II. The proposed location for the access trail passing through the SW1/4 of Section 31, T143N, R88W and the S1/2 of Section 36, T143N, R89W is preliminary.

[10.] The Voigt Comments next take issue with CCMC’s proposed road location in the SE/4 of Section 36, Township 143 North, Range 89 West, claiming “the relocation of the road in violation of law and of the Voigt’s [sic] property rights.” Voigt Comments, at p. 5. This argument is wrong in multiple respects, all of which are conspicuously absent from the Voigt Comments.

[11.] CCMC included the proposed road location as a part of the Commission's regulations regarding what CCMC must include in its permit applications. *See, e.g.*, N.D.A.C. § 69-05.2-08-02(1)(f), (g); N.D.A.C. § 69-05.2-09-02(7); N.D.A.C. § 69-05.2-09-06; N.D.A.C. § 69-05.2-09-07. While a required component of the permitting process, the Commission does not have jurisdiction over whether to approve or disapprove the relocation of any road. In its April 2015 Order, the Commission clearly told the Voigts that the "closure of county roads in the vicinity of the Coyote Creek Mine is under the jurisdiction of the Mercer County Commission, not the Public Service Commission." Case No. RC-13-850, Docket No. 125. When the Voigts again raised the issue years later, the Commission told them the exact same thing in an Order dated October 21, 2019. Case No. RC-19-189, Docket No. 60 at ¶ 13. Nothing has changed in that regard. *See* N.D.C.C. § 38-01-07.1 (giving the county commission authority). Left for the imagination is how the Voigts reasonably believed the Commission had jurisdiction to consider whether the applications violate the law or their property rights.

[12.] The applications properly contain the required road information. CCMC's road reconstruction plans, however, are preliminary and subject to whatever change may be necessary to secure the Mercer County Commission's approval, the entity with jurisdiction over roads. CCMC is currently required to put a road back in the vicinity of this location, on easements to be obtained by Mercer County, through a Resolution adopted by the Mercer County Commission on May 18, 2016 (the "Resolution"). The Resolution was the result of four public hearings before the Mercer County Commission and a subsequent lawsuit from the Voigts. Casey Voigt has been consulted on numerous occasions regarding the proposed location of the reconstructed road, as has the North Dakota Department of Trust Lands. And while they now object, the Voigts do not dispute that Casey Voigt verbally approved, to CCMC, those preliminary road plans. While

reserving all legal rights it may have to construct the proposed road, CCMC is waiting for the Voigts and Mercer County to approve the location for reconstruction of the road.

[13.] By approving the applications, the Commission is not somehow granting CCMC any property right or authority to actually construct the road at issue. As above, the particular road at issue was already the subject of four public hearings in front of the Mercer County Commission and a subsequent lawsuit where the Voigts sued the Mercer County Commission and CCMC. After being firmly told this road is squarely under the jurisdiction of the Mercer County Commission, and after bringing litigation against Mercer County and CCMC regarding the road, here we are discussing the road again at the Commission, notwithstanding that CCMC has been in communication with Mr. Voigt regarding the location of the reconstructed road.

III. The Voigts (again) wrongly claim Policy Memo 17 is deficient.

[14.] The Voigt Comments conclude by again complaining about the graded spoil testing required by Policy Memo 17 and how that relates to the amount of required suitable plant growth material (“SPGM”). Voigt Comments, at pp. 5–6. As the Commission knows, these issues are the subject of ongoing litigation brought by the Voigts against CCMC and the Commission. The Voigt Comments fail to mention the District Court recently rejected their arguments and affirmed the Commission’s conclusions that the SPGM respread meets the requirements of the law and the Commission’s regulations. *Voigt v. N.D. Public Serv. Comm’n*, Case No. 08-2024-CV-00694, Docket No. 140 (Burleigh County District Court).

[15.] Other than complaining that the Commission found Casey Voigt’s testimony not credible, the Voigt Comments offer nothing new with this argument. As it has been from the beginning, the Voigts’ argument is nothing more than a wrongly placed attempt at changing laws and regulations, not through the proper channels of rulemaking and lawmaking or with actual scientific

evidence, but through a hearing process in which there is no legal authority to change laws and regulations. If the Voigts do not like a law or regulation, there exists a well-established process to change them. *See* N.D.C.C. § 38-14.1-34.

[16.] Nothing requires the additional testing that the Voigts want. The Voigts' repeated reliance on rhetoric cannot erase the reality that neither the facts nor the law support their argument. Furthermore, it is inappropriate to subject the Commission and CCMC to the expense and time of a formal hearing when the real goal was apparently an attempt to argue the law should be changed (without even presenting any credible scientific basis for a change), knowing full well the administrative hearing is not the place to change the law. As Commissioner Fedorchak recently stated at a Commission work session discussing this issue, "is there a question of law in that, I mean, it's in the rules. The rules exist. They've been explained...There was no request to change the rules that I'm aware of...that's the only way to change what we do is to change the rules that govern what we do." Case No. RC-23-348, Docket No. 151 at ~1:09:25.

IV. The Voigts continue to misunderstand and intentionally misrepresent facts and data.

[17.] From alluvial valley floors, to dust, and to SPGM, the Voigts and their counsel have tried to portray themselves as having deeper technical understandings than the Commission and its staff. The current Voigt Comments are the latest instance in which the Voigts and their counsel attempt to do so, without bringing credible expert witness testimony or real data.

[18.] Now, they focus on bond release data that they admit they "do not claim to fully understand." Voigt Comments, at p. 3. Despite not fully understanding the data, the Voigts include it in their public comments anyway, launching into wildly inaccurate "analysis" to conclude the data is very "concerning" for the coal industry. *Id.* What is most concerning is the Voigts', and their counsel's, demonstrated and repeated practice of not caring to understand the

facts before jumping to conclusions instead of focusing on CCMC's proposed action or the real facts. The Voigts tried that months ago to no avail. Case No. RC-23-348, Docket No. 104, at ¶ 51 (recognizing that the Voigts called a witness to testify about harvest yield maps on property leased by him, but actually located at a different mine, and where coal removal never actually took place).

[19.] The Voigts and their counsel should make a better effort to fully understand the bond release numbers before questioning them in a manner that, by extension, questions the Commission's entire permitting program. That is especially so where, as here, their conclusions falsely and intentionally cast dispersions on an entire industry. The Voigt Comments provide that the "Voigts recently obtained some numbers on reclamation and bond release from the Commission" after "trying to get information on reclamation for years and do not claim to fully understand the spreadsheets from Commission staff." Voigt Comments, at p. 3. It appears the Voigt Comments are trying to claim that less than 2,000 acres have been released from all North Dakota mines. Maybe the Voigts and their counsel were not paying attention at the December 2014 hearing they requested when Mr. Jim Deutsch, the Director of the Reclamation Division at the time, testified that as of that time, 20,800 acres had received final bond release in North Dakota. Case No. RC-13-850, Docket No. 125 at ¶ 26. Commission data shows this number to be closer to 30,000 acres today.

CONCLUSION

[20.] The Voigt Comments are the latest example of their misuse of the Commission's well-intentioned permitting process. In addition to relitigating issues they lost and/or that are beyond the scope of the Commission's jurisdiction, the Voigt Comments now question the Commission's entire permitting program based upon data that they freely admit that they do not "fully

understand” and turns out is wildly inaccurate. Voigt Comments, at p. 3. None of that justifies their dangerous rhetoric or the aim that they take on the Commission and its staff.

[21.] While on notice that they cannot blatantly abuse the PSC process, the Voigts are obviously not “under constant threat of litigation,” Voigt Comments, at p. 6, as they are the ones who have sued CCMC, the Commission, and others, on multiple occasions. CCMC has never threatened or initiated litigation against the Voigts. Despite the Voigts’ decade-long litigious streak, CCMC remains committed to working with them to reasonably accommodate their ranching operation and will do everything it can to communicate with the Voigts.

[22.] CCMC requests that the Commission approve Renewal 2, Permit NACC-1302 in Case No. RC-24-245 and Revision 13, Permit NACC-1302 in Case No. RC-24-244.

Dated this 25th day of September, 2024.

/s/ Wade C. Mann

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