

**NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Coyote Creek Mining Company, L.L.C.**  
**Revision 13, Permit NACC-1302**  
**Renewal 2, Permit NACC-1302**  
**Applications**

**Case No. RC-24-244**  
**Case No. RC-24-245**

**OAH File No. 20240452**

**LANDOWNERS' ANSWER TO PETITION FOR ATTORNEY'S FEES**

**March 31, 2025**

¶1 Casey and Julie Voigt (Landowners or Voigts) submit this Answer to Coyote Creek Mining Company, L.L.C.'s (the Mine) Petition for Attorney Fees Pursuant to N.D.C.C. § 38-14.1-36 and N.D.A.C. § 69-05.2-01-07.

**I. The Voigts are not vexatious litigants.**

¶2 The Mine recycles portions of its previously denied Motion for Attorney Fees in Case No. RC-23-348, Docket No. 124. The Mine continues to bring up past matters in hopes that the Commission will change its mind and grant attorney's fees to the Mine, having basically copied and pasted pages to its Petition word-for-word from its previously denied Motion. *See* Docket No. 110, ¶¶7-15 and Case No. RC-23-348, Docket No. 124, ¶¶5-13. The Voigts care about their ranch. They care about the soil they have spent their lives building, and they watch it carried off from their land one truck at a time, or simply watch it float away on the wind. That's hard, but they express their concerns through the appropriate channels – channels created in the public participation provisions of SMCRA for *precisely this purpose*. But the Mine believes it should be able to do as it wishes and the Voigts should not be allowed to express their concerns to the ND Public Service Commission. The question now is whether the ND Public Service Commission agrees.

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**A. The Landowners' issues were contained in their Written Comments.**

[¶3] The Mine complains that the Landowners did not request an informal conference, yet complains that the Landowners requested a formal conference without attempting to have a conversation. This is untrue. The Landowners did have multiple conversations with the Commission staff and the Mine before requesting a formal conference, which included *at least* five meetings from August 22, 2024 to December 13, 2024 (the date of the informal conference). *See* Decl. of Casey Voigt, ¶1. And Mr. Voigt *continues* to have meetings trying to resolve issues. *Id.*, 2. The landowners did not see that an informal conference would be a productive use of the Commission's time after discussions with the PSC staff, and in the past the Mine has *complained* when the Voigts showed up to an informal conference asking to have a conversation. But to use this to argue that the Landowners did not try to resolve the issues prior to a formal conference is simply false. The Landowners were actively engaged with the Commission, working out issues. The Mine had dug in and was not talking. The Mine's offensive attempt to color the Landowners' attempts at resolving these issues as harassment are unhelpful. No matter what the Voigts do, how they address their concerns or to whom, the Mine complains it is being harassed. It is surprising that a coal mine run by one of the largest coal companies in the world has so little tolerance for criticism. Given that in no other situation in North Dakota is there a ranch being operated coterminously with a coal mine, something that the Mine likes to ignore, it is not surprising that the situation has created disputes. It would indeed be surprising in this situation if neither party had any complaints. The Mine's goal is not to resolve disputes though – its goal is to chill public participation and the expression of concerns about its practices to the PSC. No matter how the Voigts address their concerns or to whom, the Mine will cry foul. The irony is that it is not the Voigts harassing the Mine – it is these incessant petitions for fees that are the truly harassing

behavior here. The Mine is trying to scare the Voigts off from engaging in public participation, in violation of SMCRA. Now the question is whether this Commission will aid the Mine in its goal.

[¶4] The Mine states that the Landowners “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* Docket No. 110, ¶21. A prehearing conference was held on December 11, 2024. *See* Docket No. 66. Administrative Law Judge Hope Hogan filed a letter following the prehearing conference. *See* Docket No. 67. An Order on Specification of Issues was entered on December 12, 2024. *See* Docket No. 64. It is unclear how the Mine alleges it “...went to the December 13, 2024 hearing not knowing what issues the Voigts would attempt to litigate...”. *See* Docket No. 110, ¶21. The Mine had the Voigts’ comments and had the Commission’s Order on Specification of Issues.

[¶5] That is significantly more information and notice than most applicants for a permit before the PSC receive before a public hearing. But the Mine believes it is special and warrants special consideration, and this is highlighted by its harassing attempts to bully the Voigts with these petitions for fees. In addition, at the prehearing conference, the Landowners’ counsel indicated that most of the concerns that would be raised were outlined in the Voigts comments. *See* Docket No. 67.

[¶6] It appears that the Mine did most of its preparation on December 12 and 13, according to the Mine’s billing statements attached to its Petition. *See* Docket No. 112, pg. 2. Given that it made no effort to prepare before that time, its complaints about its ability to prepare again ring hollow and prove that this petition is the real harassment and the Commission should tell the Mine it is violating SMCRA’s public participation provisions in letter and spirit with its harassing behavior.

**B. The Voigts did limit the scope of their issues.**

[¶7] The PSC issued an Order on Specification of Issues on December 12, 2024. *See* Docket No. 64. The order states “...the hearing topics to be limited to new issues or concerns not previously raised at a formal hearing about reclamation practices, reclamation success, general review of the permit, testing and sampling practices, and land owner concerns unless there is **new evidence** regarding any issues raised in previous formal hearings.” *Id.* (emphasis added). The Voigts did present new evidence and also raised their concerns outlined in the comments, which was precisely the approach counsel stated openly he intended to take at the prehearing conference. The Mine continues to use verbiage like “ambush” or “harass” to portray itself as the victim but fails to admit that it had all of the information it needed to prepare during the entire time it was preparing. It had the Voigts comments since August 26, 2024 and the Mine was also present at multiple meetings where Mr. Voigt raised their concerns. To be fair to the Mine, there are some employees such as Tyler Barth and Jeremy Eckroth who have tried to continue working with the Voigts and have managed to maintain a relationship with the Voigts, despite the acrimony and harassment the Voigts now endure from the Mine’s outside legal counsel and upper management.

[¶8] Regardless, the Voigts did bring up new evidence to the extent they raised any issues that were addressed in prior proceedings.<sup>1</sup> The Mine simply chooses to ignore this and recycle its past fee request regardless of the actual facts of the current situation. That choice betrays its animus the Mine repeatedly threatens the Voigts for voicing concerns – and its efforts are offensive and a

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<sup>1</sup> Although again the Voigts disagree with this standard and the standard from the Commission also ignores the mandates of SMCRA and its public participation provisions. If the Voigts raise concerns that go unaddressed and ignored, they are free to raise those concerns when they want through the formal process. To order them otherwise violates SMCRA, and did here. Further it absolutely appropriate for the Voigts to raise any issues in the permit during a renewal, particularly when they are issues of immediate concern to the Voigts.

brazen attempt to stifle and chill public participation under SMCRA. It violates the letter and spirit of the entire surface reclamation program in North Dakota. The Mine can and should do better.

**C. The Mine did not consult with the Voigts regarding reference areas and the Mine was in violation of the April 14, 2015 order.**

[¶9] The Mine did not consult with the Voigts regarding reference areas during or after the meeting in 2023 with Kelly Krabbenhoft and the Voigts were unaware of the selected reference areas until the meeting with PSC staff in August of 2024. *See* Decl. of Casey Voigt, ¶3. The Mine didn't consult with the Voigts until October 2024, after the Mine received comments from the Voigts. Contrary to the PSC's ruling and its subjective belief and its newfound interpretation of its own word to the Voigts, in a letter from the PSC on January 6, 2016, Jim Deutsch indicated that "CCMC must consult with you when selecting the native grassland reference areas that will be used for proving reclamation success on reclaimed areas that are owned by you as required by the Commission's formal hearing order." *See* pg. 2 of Exhibit A, attached to the Decl. of Casey Voigt (emphasis added). The Commissioners have apparently forgotten what they specifically told the Voigts as they seek to reinterpret their own words for the Mine's benefit. This Commission has gone back on its Word; a heavy, dark, and destructive action, at least as viewed by the Public of North Dakota.

[¶10] The Mine refused to consult with the Voigts on their chosen reference areas and waited until the following year after the meeting in 2023 with Kelly Krabbenhoft and the selection of the reference areas and the Voigts' complaints about no consultation before it was willing to consult with the Voigts. This is in violation of the April 14, 2015 order as the PSC's own reclamation director understood it (and his recollection and the record match the Voigt's recollection regardless of false statements made by numerous people trying to rewrite history to suit their views). The Voigts have every right to point out when the Mine is rewriting history and making a

false record and attempting to convince the Commission to reinterpret words that the Commission's own staff have already interpreted consistent with the Voigts. It was and is a valid point brought up by the Voigts at the formal hearing. The Mine cannot state that the Voigts "wasted the Commission and CCMC's time and resources addressing this issue" when the Mine was clearly not following the 2015 order when it met with Kelly Krabbenhoft in 2023 and chose reference areas for the Voigts to "review" and did not include the Voigts in the process until it was brought up by the Voigts in their comments. Further, Kelly Krabbenhoft is not a registered soil classifier as admitted through Mr. Eckroth's testimony. *See* Docket #68, 2:59:51-54. When Mr. Voigt has his own experts out to review the reference areas, after demanding that and eventually being told he was wrong that he even had a right to do so (which was itself a slap in the face given the real history and comments such as Mr. Deutsch's and the truth of this matter being ignored by the Mine and the Commission). The Voigts are not wrong. The Mine is and this Commission is and the present petition for fees is a direct attempt to punish the Voigts for engaging in public participation under SMCRA. And for the record engaging in the public participation processes through the Commission may be burdensome but are not as burdensome as complex litigation in federal court.

**D. The Voigts provided new evidence regarding dust and the Mine has no basis to provide new evidence after the matter was closed at the formal hearing at the request of the Mine.**

[¶11] The Mine complains that it could not cross-examine because it did not know the Voigts' issues. That has been addressed earlier in this brief. The Mine uses this as a pretext to input new evidence into the record to try to refute Casey Voigts testimony at the formal hearing. The Voigts have responded and objected to the Mine's attempt at new evidence and the Mine has continued to try to input new evidence into the record even after the Mine's counsel explicitly insisted the matter to be closed at the close of the hearing and explicitly said the record should be closed. *See* Docket No. 103. Mine's counsel indicated at the formal hearing, "The Mine does not agree to that.

I think it's – we can do oral closings now and there is really no need for anything after the fact.” Docket #56, 4:47:21-31 (emphasis added). Yet the mine continues to provide new evidence. “Rules for thee, and not for me,” is the expression that comes to mind.

[¶12] Voigts provided updated photos of the dust taken on October 8, 2024 at 12:19 p.m. and 12:20 p.m. *See* Decl. of Casey Voigt, ¶5 and Docket #79. All of the Mine’s surveillance photos submitted here were taken *after* 12:20 p.m. The Mine’s surveillance provides no probative evidence and makes untrue allegations. The Mine’s surveillance actually proves that the trucks did not produce the dust on the vehicle because the dust was *already there* prior to the trucks passing. Mr. Voigt observed the Mine removing dirt from the subsoil pile above their house on October 8<sup>th</sup>. *Id.*, ¶6. The Voigts did not find it necessary to refute the Mine’s attempt at getting more evidence in the record as they had provided an objection and the PSC did not allow the additional evidence into the record. The PSC should disregard any additional evidence by the Mine as the matter was closed at the hearing on December 13, 2024 at the request of the Mine and should ignore the Mine’s attempts at trying to show the Voigts are proceeding in “bad faith or embarrass[ment]” because its simply untrue – similar to the Mine’s false claims that the Voigts never needed to be consulted on reference areas, a new view of history the Mine has convinced the Commission to adopt despite Truth.

**E. The Mine was rebuilding the road despite its claims that it was not.**

[¶13] The Mine claims that the road is “proposed” only and the Voigts “...spent considerable time at the hearing complaining that the Commission was illegally allowing a road to be placed on the Voigts’ property...”. *See* Docket #110, ¶28. The Mine’s witness, Jeremy Eckroth testified “...it [the road] really hasn’t been built - we submitted grade approval packages that encompass that road and we – we had to make the decision on what were going to do with that. So we put subsoil in place for that road but that’s all we’ve done at this point for half of that road...” Docket #68,

2:40:24-45. This statement is intended to mislead. There is no *topsoil* to put down for a *road*. Grading the subsoil is the vast majority of the work for “building” this road, other than spreading some aggregate on the top.

[¶14] The Mine did not attempt to resolve the issue with the road for almost two years and brought it up only *after* the Written Comments were submitted by the Voigts. *Id.*, 2:47:12-2:48:00.<sup>2</sup> The Mine complains that the Voigts do not raise concerns until formal proceedings and that is why the Mine never resolves their concerns. Then the Mine claims the Voigts are proceeding in bad faith and harassment and demand attorney’s fees when they raise issues in formal proceedings that have been outstanding for years.

**F. The Voigts did present new evidence regarding the capping sodic spoil with glacial till.**

[¶15] Casey Voigt produced a higher resolution photo of the evidence previously provided to show the capping of the sodic spoil with glacial till. It appeared that the decision-makers and others at prior hearings were not making out what Mr. Voigt explained on this photo, so he had a high resolution copy of the photo made in order to illustrate his point (which the Mine had asserted was a lie and the Voigts are apparently being told they should do nothing in the face of such an accusation).

**G. The Mine is aware of the issues with compaction and if there were no concerns it should share its data with the Commission and the Voigts.**

[¶16] The Mine did more compaction testing after the Written Comments were submitted by the Voigts on August 26, 2024 than the Mine had done in the *two years* prior to the comments. Almost 22 more samples were taken. *See* CCMC Exhibits 5-6; Docket ## 85-86 compared to CCMC Exhibit 8; Docket #88. The Mines witness, Jeremy Eckroth, indicated there were issues of

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<sup>2</sup> And the Mine was aware of this issue and the dispute was before the County at least eight years ago.

compaction in their testimony and that he was aware of the issues of compaction. *See* Docket #68, 2:51:25-2:51:29. The Mine’s exhibits produced at the formal hearing **only indicated an average** of the results of the testing as indicated in Mr. Eckroth’s testimony. *Id.*, 2:51-2:56. Mr. Eckroth even admitted that the Mine did not do testing **past the subsoil**. *Id.*, 2:56:24-2:56:48. The Mine also refuses to produce any compaction testing results even though the Voigts have concerns. *Id.*, 3:04:59-3:05:22. The Commission asked for the Mine’s results and the Mine told the Commission sharing them would not be possible. *Id.*, 2:54:37-2:55:00. Mr. Eckroth testified that it depends on your definition of “excessive compaction” whether a person would view the compaction as “excessive” but yet the Mine **refuses** to turn over any compaction testing results to the Voigts. *Id.*, 3:05:27-3:05:56. The Mine did, however, admit at the hearing that it had recently learned how to use its own software and is now able to share its testing data. *Id.*, 2:54:37-2:55:00. Whether its ability to share has now led it to actually share the results with the Commission is unknown to the Voigts – they are never included on such helpful information about their own soil. It is alarming that the Commission asked for this data and the Mine refuses to give it to the Commission despite its admission it can. It is also alarming that the Commission is not asking for that data.

### **CONCLUSION**

[¶17] The Voigts respectfully request that the Public Service Commission deny the Mine’s Petition for Attorneys’ Fees. It is an unfortunate result of the Mine’s counsel and management expressing emotion through legal filings. There is no place for it here.

[¶18] The surface mining laws contain public participation provisions for a reason. Lest it go unsaid and be forgotten once again, the Voigts have been involved in this proceeding with the Mine related to reclamation under North Dakota’s version of “SMCRA,” the federal surface mining reclamation law. *See, e.g.*, N.D.C.C. § 38-14.1-02(5) (stating Commission is state regulatory authority for Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91

Stat. 445; 30 U.S.C. 1201 et seq.)). This proceeding arises from SMCRA’s public participation process created to protect private property rights and American agriculture. It is important to recognize that the participation by the Voigts is precisely the kind of landowner involvement and participation that is specifically *encouraged by coal mine reclamation laws* in order to ensure better reclamation of mined soils.

[¶19] In 1977, the Nation’s legislators well understood the fundamental economic principle that, **“[f]or any market to operate, enforceable property rights are necessary,”** and the nature of coal surface mining requires a balancing of those rights against the country’s need for coal as an energy resource. 30 U.S.C. §§ 1201, 1202(b) and (i); Joseph P. Tomain and Richard D. Cudahy, *Energy Law in a Nutshell*, 18 (2016) (emphasis added). Congress expressed this intent in pertinent part with the passage and enactment of § 1202 “Statement of Purpose [of SMCRA]” which expressly provides that:

It is the *purpose* of this Act to –

...

(b) assure that the *rights* of *surface landowners* and other persons with a legal interest in the land or appurtenances thereto are *fully protected* from such operations; [and to]

...

(i) *assure that appropriate procedures are provided for the public participation* in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary *or any State* under this Act;

...

(Emphasis added).

[¶20] Congress furthermore expressed support for public and landowner participation in State proceedings with debate on the House and Senate floor. 128 Cong. Rec. 12617-15862 (1977). As just one example among many, Rep. Philip Ruppe (R-MI), stated before his elected colleagues that “[l]andowners, the public, and residents adjacent to mine areas should be protected. They deserve and have the right to the environmental standards we have in this legislation.” *Id.*, at 12638.

[¶21] The Mine complains loudly of harassment, but this petition for fees is the true harassment occurring in this proceeding. True it is that the acrimony between the Mine and the Voigts is high. Staff for the Commission can confirm that it is rare to unique to have an entire cattle ranch operating concurrently on the same land as an active coal mine. In any other similar situation in North Dakota the mine has relocated the farmers and ranchers or bought them out and owned the land itself. But the Voigts continue to try to care for their land and cattle in the midst of an active coal mine, while that coal mine targets them and claims it cannot possibly defend itself against their onslaught of concerns and must have the heavy hand of the Commission strike down its foe for expressing concerns. It's offensive and wrong and embodies the Mine's belief in its own infallibility. This is a misperception by the Mine. There are disputes that will inevitably arise in this situation. There is a public participation process for addressing those disputes. The Mine wants that process shut down. **But it was literally created to deal with this precise situation.**

[¶22] The Voigts have a right to express their concerns to the PSC through formal participation. If they do not, there are alternative forums for complex litigation such as the federal courts, and those are not less expensive or burdensome nor are they more appropriate. The Mine needs to stop threatening the Voigts and accept that it has not addressed the Voigts' concerns in a satisfactory manner (and whatever the result, it is clear the Voigts have shown that the Mine's 'evidence' is refutable and sometimes proves nothing or even just blatantly rewrites history), and the result of that will always be that the Voigts take their concerns to this Commission. Because **that is what the law administered by this Commission tells them to do.** And it is alarming that the Voigts even have to justify addressing their concerns to their **Public** Service Commission.

Dated: March 31, 2025.

Respectfully submitted,

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