

NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Coyote Creek Mining Company, L.L.C.
Revision 14, Permit NACC-1302
Application**

Case No. RC-25-270

COMMENTS OF CASEY AND JULIE VOIGT AND REQUEST FOR INFORMAL CONFERENCE

March 30, 2026

Coyote Creek Mining Company, L.L.C. (“CCMC” or “Mine”) filed an application to revise Surface Coal Mining Permit NACC-1302. Casey and Julie Voigt (“Voigts”), by and through their counsel, hereby submit comments on CCMC’s application on “Revision 14.” For the reasons stated in these comments, the Voigts object to the mining plan and request an informal conference with the Public Service Commission (“PSC”) staff. The Voigts own the surface of much of the mine. The Voigts’ house, in Section 31 of T143N, R88W, is directly adjacent to the active mining area for the mine and is within the permit boundary. The Voigts also continue to operate an active cow-calf ranching operation upon the surface of the mine permit area. The Voigts have voiced concerns regarding various issues over the years including dust control and mitigation, access to their property, and the adequacy of reclamation efforts. They continue to have these concerns, and also raise the following specific issues for the PSC’s review.

Section 4.3.1 – Lack of good-faith consultation on reference areas

Although they did not take an appeal, the Voigts disagree with the PSC’s recent decision from December 30, 2024 that states “CCMC has not violated the Commission’s April 14, 2015 order and the reference areas have not been approved by the Commission.” *See* 12/30/2024 Findings of Fact, Conclusions of Law and Order, ¶19. The Voigts also disagree with the following statement, “The Commission finds that CCMC has not violated provision 2(c) of the Commission’s April 14, 2015 order.” *Id.*, ¶20. The Commission based this on its new interpretation of the 2015 order when it claimed that the 2015 order only required consultation on management practices and not the selection of locations for the reference sites. That is wrong and ignores history.

For example, I have enclosed a letter from James Deutsch dated January 6, 2016, which states, “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* enclosed letter from Mr. Deutsch, page 2 (emphasis added).

The Mine did not consult with the Voigts for the reference areas until Fall of 2024 and had not consulted with the Voigts during or after the meeting in 2023 with Kelly Krabbenhoft. The Voigts

were not made aware of the Mine's selected reference areas until the meeting with PSC staff on August 22, 2024. At this time the mine had *already selected* the reference areas and it was no longer possible to have a genuine consultation with the Voigts on the locations.

Enclosed is a partial AI transcript we had done from Rev.com for the hearing on January 2, 2015. Please review the testimony regarding the reference areas, specifically, pages 2, 16, and 17. If you review the transcript you will find that the folks in the room clearly understood that the Voigts would be involved, and I hope you can see how the statements made on the record at that hearing would leave the Voigts to reasonably believe that to be true. For example, one exchange went as follows:

Speaker 7 (00:37:53): And Mr. Voight [sic] can participate in, in helping make sure that, that he would agree that, that that's a, a fair, a fair representation of his property as a whole?

Speaker 4 (00:38:07): Absolutely.

The Mine had almost 10 years to consult with the Voigts on the reference areas and failed to do so until the Voigts pointed it out in their prior written comments. The story being told now, that the Voigts never needed to be consulted at all, is an attempt to rewrite history. Despite what has been said recently, the Voigts request that they be consulted when selecting the reference areas and establishing management practices for the reference areas as was required by the order of April 14, 2015, page 17, ¶2(c).

Now in Revision 14 the Mine says that it consulted the Voigts and included five of six references areas, and dropped one. But that leaves out the fact that the Voigts' consultants explained why that sixth reference area was inadequate. And when that discussion occurred in the field, the plan was to work cooperatively to find another reference site for the shallow loams that was more representative. Rather than find another site that is adequate for shallow loams, the Mine simply dropped it and refused to make any further attempts, and the first notice the Voigts had of this was this application for revision. This is not consultation, it is a refusal to work with the Voigts. The shallow loamy site is representative of a significant amount of acreage of the Voigt lands, and a more appropriate site should be picked. Because the Voigts requested this and their experts recommended this, the Mine retaliated by simply removing the site altogether. This is not consultation nor is it acting good faith. The Mine should be required to work with the Voigts to find a suitable reference area for shallow loamy soils.

Section 1.2.8 and 4.1.1 – No binding easement for road replacement

The Voigts have not been paid for the easement and do not agree that it is a valid easement. The Mine's narrative at 4.1.1. states: "Mercer County has acquired an easement from the Voigts to reclaim the farmer access road through Section 36, T143N, R183W, following the original pre-mine road alignment." An easement is contained in 1.2.8 that was signed by the Voigts. But the Voigts were never paid the agreed-upon consideration for the easement and it is therefore not valid and binding. It should be removed from the proposed Revision 14.

Compaction testing, productivity, and reclamation

The Mine has refused to provide compaction testing to the PSC. At the formal hearing on the last renewal in RC-24-244 and RC-24-245, the Mine's witness indicated he was aware of issues with compaction. *See* Docket ##68, 56, recording of formal hearing, 2:51:25-2:51:29. The PSC asked for the Mine's data on compaction testing and the Mine told the Commission sharing the results would not be possible. *Id.*, 2:54:37-2:55:00. 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. As was pointed out at the prior hearing, however, the Mine only appeared to be doing compaction testing on shallow soils with a penetrometer. The Voigts recently asked the PSC for this data, and none is available. The Voigts respectfully request that the PSC ask the Mine to share the data it has on compaction testing.

There are also concerns about hardpan spoil underlying the topsoil and subsoil. The Voigts conducted their own testing with an independent contractor, and findings of compaction in the spoil underlying the subsoil and topsoil are startling, particularly given that the Voigts intent post-reclamation is to return native prairie grasses to the area. These deep rooting grasses will likely be unable to root to a natural depth, and water infiltration will be negligible beneath the subsoil potentially leading to further complications with reclamation. In two soil bores, the Coefficient of Permeability was 9.0×10^{-8} and 7.3×10^{-9} at depths of 45-60 inches and 30-36 inches, respectively. These numbers are concerning because prairie grasses reach depths far greater than the soil and subsoil respread depths required by the PSC (which the Voigts still believe are shallower than they should be). I have included with these comments a full copy of the report by the Voigt's contractor.

It is also unfair that the Voigts are forced to conduct this testing when the Mine has the means to do so itself, and presumably even has significant data that need only be requested by the PSC. Further, it is no cost to the Mine because it is under a cost-plus contract with the utilities to whom it sells lignite, and its lignite sales agreement provides that it will receive "an amount that equals the sum of (i) the Cost of Production (Section 7.2(a)), (ii) the Agreed Profit payable to Seller (Section 7.2(c)(i)) and (iii) the Capital Charge (Section 7.2(d))." *See* Second Amendment to Lignite Sales Agreement (emphasis added). The Voigts request that the PSC require regular compaction testing and reporting of those results to the PSC so that they can be made available to the Voigts.

For the foregoing reasons, the Voigts object to CCMC's application for Revision 14 to surface mining permit NACC-1302. The Voigts additionally request an informal conference with the PSC staff on these issues and any other issues that may arise during the course of these proceedings and which are under the jurisdiction of the PSC.

Submitted this 30th day of March, 2026.

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