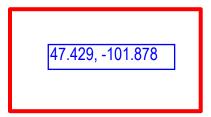
Complaint to: North Dakota Public Service Commission Farmland: T146N R88W S34 NW1/4 in Mercer County, north of Beulah, North Dakota Complainants: Clyde Eisenbeis, Allen Eisenbeis, JoAnn Crabtree Respondent: North American Coal

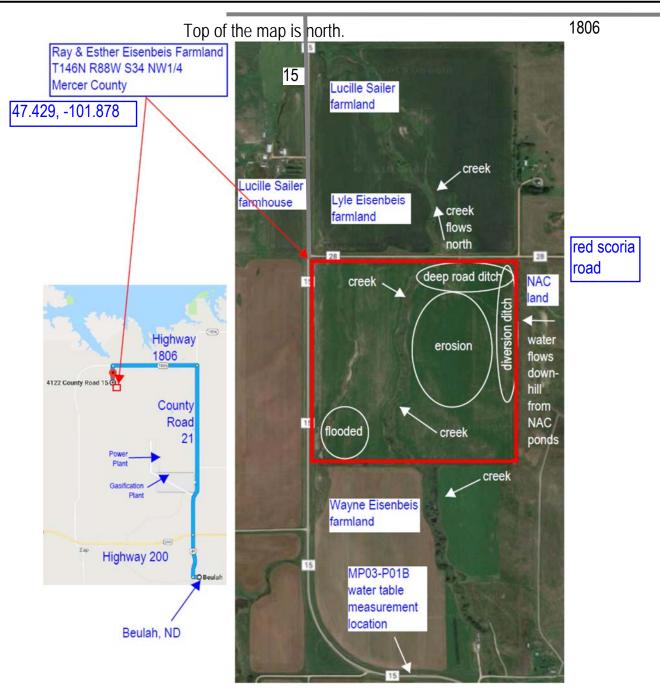


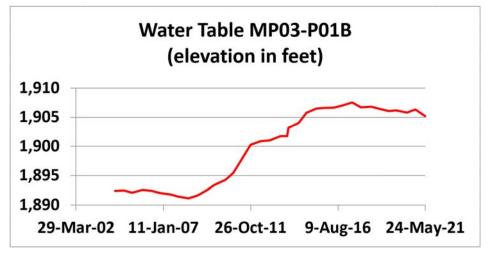
If there are mistakes or confusion in this **Complaint**, contact Clyde Eisenbeis they can be fixed.

- Appendix A PSC Complaint Decision Letter 13 Jun 2019
- Appendix B North American Coal Dishonest Response Letter 19 Jun 2018
- Appendix C North American Coal Proposed Approach Agreement 22 Sep 2017
- Appendix D North American Coal Threatening Letter 5 Jul 2018
- Appendix E Eisenbeis Farmland History Log
- Appendix F Questions not allowed at the Informal Complaint Meeting 12 Jun 2019

Definitions:

- Farmland: T146N R88W S34 NW1/4, north of Beulah, North Dakota (in Mercer County)
- Landowner:
  - 6 Sep 2011 to 18 Jun 2016: Esther Eisenbeis (Clyde Eisenbeis was the POA)
    - 18 Jun 2016 to the present: Clyde Eisenbeis, Allen Eisenbeis, and JoAnn Crabtree
      - Esther Eisenbeis had Alzheimer's for many years. She died on 18 Jun 2016.
      - Clyde Eisenbeis lived in Iowa in 2011. Clyde Eisenbeis moved back to ND in Oct 2015.
- Eisenbeis: Clyde Eisenbeis
- Eisenbeis Family: Clyde Eisenbeis, Allen Eisenbeis, and JoAnn Crabtree
- NAC: North American Coal / Coteau
- Pond: North American Coal / Coteau Coal Mining Sedimentation Pond
- PSC: North Dakota Public Service Commission





Every event described in this complaint is related to coal mining. These events occurred because:

- A coal mining sedimentation pond (**Pond**) was installed on a hill on adjacent North American Coal (**NAC**) land.
  - o If a **Pond** had not been installed, none of these events would have occurred.

--- and ---

- Pond water was discharged into the south end of the Farmland creek from a mine south of the Farmland.
  It flooded Lucille Sailer farmland.
  - It eroded **Eisenbeis Farmland**, Wayne Eisenbeis farmland, Lucille Sailer farmland, and Lyle Eisenbeis farmland. Flowing water modifies land.

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NAC modified the Farmland by disturbing the natural land surface without a permit.

NDCC (North Dakota Century Code) 38-14.1 Surface Mining and Reclamation Operations

• NDCC (North Dakota Century Code) 38-14.1-02 (35 b) "Surface coal mining operations means: ... The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities"

NDAC (North Dakota Administrative Code) 69-05.2 Surface Coal Mining and Reclamation Operations

 NDAC 69-05.2-01-02 (1) "Adjacent area means land located outside the affected area or permit area"

PSC Memorandum

• PSC Memorandum 6 to Mine Operators, March 8, 1995 "activities and disturbances must be conducted within the boundaries of a surface coal mining permit"

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Appendix A contains the contents of a PSC Complaint Decision Letter with comments added by Eisenbeis.

Appendix B contains the contents of the NAC Dishonest Response Letter with comments added by Eisenbeis.

Appendix C contains the contents of the NAC Proposed Approach Agreement with comments added by Eisenbeis. If the complaint is not related to coal mining, why did NAC write this letter?

Appendix D contains the contents of the NAC Threatening Letter with comments added by Eisenbeis.

Appendix E contains the contents of the Eisenbeis Farmland History Log starting in 2011.

Appendix F contains questions not allowed at the first complaint meeting.

## North Dakota Century Code (NDCC):

https://www.ndlegis.gov/general-information/north-dakota-century-code

38 Mining and Gas and Oil Production => https://www.ndlegis.gov/cencode/t38.html

38-14.1 Surface Mining and Reclamation Operations => https://www.ndlegis.gov/cencode/t38c14-1.html

- 38-14.1-01 Declaration of findings and intent
- 38-14.1-01 (1) disturbances of surface areas ... by damaging the property of citizens
- 38-14.1-02 Definitions
- 38-14.1-02 (17) Permit area means land approved for surface coal mining operations
- 38-14.1-02 (19) Permit revision mean modification of permit and includes changes in the mining plans boundary extensions
- 38-14.1-02 (34) Surface coal mining operations means surface coal mining
- 38-14.1-02 (35 a) activities affecting the surface of lands in connection with surface coal mines
- 38-14.1-02 (35 b) areas where activities disturb natural land surface ... includes adjacent land
- 38-14.1-14 Permit applications Mining and reclamation plans
- 38-14.1-14 (1) Permit applications ... must contain (r 13) Permit applications ... must contain the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto
- 38-14.1-21 (3 c) Prevent damage to the hydrologic balance outside the permit area
- 38-14.1-24 Environmental protection performance standards
- 38-14.1-24 (8) Minimize the disturbances to the prevailing hydrologic balance in associated offsite areas (f)
  Avoiding natural channel deepening

## North Dakota Administrative Code (NDAC)

### https://www.ndlegis.gov/agency-rules/north-dakota-administrative-code

- 69 Public Service Commission website
- 69-05.2 Surface Coal Mining and Reclamation Operations website
- 69-05.2-01 General Provisions
- 69-05.2-01-02 Definitions
- 69-05.2-01-02 (1) ... Adjacent area means land located outside the affected area or permit area ....

# PSC Public Awareness: Laws, Rules and Other

## Interpretive Documents by Jurisdiction - Coal Mining

### https://psc.nd.gov/public/laws/othercoalmining.php

- Policy Memorandum
  - o 6 Activities Covered by Surface Coal Mining Permits

- In the fall of 2011, Clyde Eisenbeis (Eisenbeis) received a phone call from Jerry Becker, NAC, about erosion on Esther Eisenbeis farmland (Farmland). There were two NAC requests: 1) repair the erosion damage on the Farmland, and 2) to install a diversion ditch on the Farmland.
  - If this is not related to coal mining, why did Jerry Becker, NAC, call Eisenbeis to obtain permissions?
  - If this is not related to coal mining, why did the PSC inspect the Farmland and take photos of the Farmland?
- Eisenbeis was told, by Wayne Eisenbeis, the Farmland renter, that the erosion was due to NAC Pond water overflow.
- Repairing the erosion seemed ok to **Eisenbeis**. Installing a diversion ditch on the **Farmland** was not ok. **Eisenbeis**, told **NAC** that the diversion ditch should be installed east of the **Farmland** on **NAC** property.
- **Eisenbeis** was told that electric powerline poles are too close for a diversion ditch on **NAC** property. **Eisenbeis** was told there are five electric powerline poles (no longer in use), the closest pole being 24 feet. **Eisenbeis** stated that 24 feet is plenty of space for a diversion ditch.
- NAC proceeded to repair the gullies on the Farmland. NAC also installed a diversion ditch on the Farmland without Eisenbeis approval. NAC deepened the road ditch without Eisenbeis' knowledge.
  - If this is not related to coal mining, why did NAC repair gullies the Farmland?
  - If this is not related to coal mining, why did NAC install a deep diversion ditch on the Farmland?
  - If this is not related to coal mining, why was **Pond** water netting found in numerous locations on the **Farmland**?
  - If this is not related to coal mining, why did NAC deepen the road ditch to the Farmland?

#### ---

On 21 Nov 2014 **Eisenbeis** received a phone call from Jerry Becker, **NAC**, about new erosion on the **Farmland**. **NAC** planned to repair the erosion damage.

- If this is not related to coal mining, why did Jerry Becker, NAC, call Eisenbeis to obtain permissions?
- If this is not related to coal mining, why did the **PSC** inspect the **Farmland** and take photos of the **Farmland**?
- NAC proceeded to repair the gullies on the Farmland with Eisenbeis approval. NAC proceeded to deepen the diversion ditch on the Farmland without Eisenbeis approval. NAC deepened the road ditch without Eisenbeis' knowledge.
  - If this is not related to coal mining, why did NAC repair gullies the Farmland?
  - If this is not related to coal mining, why did NAC deepen the diversion ditch on the Farmland?
  - If this is not related to coal mining, why was more **Pond** water netting found in numerous locations on the **Farmland**?
  - If this is not related to coal mining, why did NAC deepen the road ditch to the Farmland?
    - Was it to penalize the **Eisenbeis Family** because the **Eisenbeis Family** did not do what **NAC** wanted?

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In Oct 2015, **Eisenbeis** moved from Iowa to Bismarck, ND after he retired. As Wayne Eisenbeis decided to reduce his farming operation, **Eisenbeis** had to find another **Farmland** renter.

While attempting to find a farmer willing to rent the **Farmland**, **Eisenbeis** was told by a potential farmland renter that road ditch was too deep for farm equipment and farm trucks. There needs to be an approach.

Eisenbeis traveled to the Farmland to investigate. Eisenbeis was shocked by what he saw.

- The road ditch had been deepened which blocked access to the Farmland.
- The diversion ditch was huge which displaced Farmland.
- There was water flooding the southwest corner of the Farmland. Eisenbeis had never seen any flooding of Farmland.
- There was water in the Farmland creek. Eisenbeis had never seen any standing water in the Farmland creek.

Why would anyone, especially a company, take advantage of elderly who have Alzheimer's?

• Esther Eisenbeis was not capable of driving to her farmland, or understanding what NAC was doing.

Eisenbeis eventually found a farmland renter.

- That renter cannot drive a grain truck across the deep road ditch onto the Farmland.
- That renter needs to drive the combine across the deep road ditch to unload the grain into the grain truck.
- That renter uses a chain saw to cut down some trees in the road ditch to access the Farmland.
- Eisenbeis then discovered Wayne Eisenbeis, also, had to drive his combine across the deep road ditch to unload grain.

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**Eisenbeis** contacted Jerry Becker, NAC. Jerry Becker, NAC, agreed, via phone, to install an approach. NAC would meet **Eisenbeis** at the **Farmland** to discuss the location of the approach.

- On 13 Apr 2016, Jerry Becker and Bill Kirk (NAC), Jerome Boeshans and Jayme Boeshans (Farmland renters), and Eisenbeis met at the Farmland. Bill Kirk, NAC, stated that the approach design was complete. The approach would be large enough to accommodate a grain semi-truck. The approach would have two culverts. Stakes had been put into the ground to show the location of the approach. The Farmland renters and Eisenbeis agreed on the approach location. Jerry Becker, NAC, stated the approach would be installed in a few weeks.
  - If this is not related to coal mining, why did NAC initially agree to install an approach to the Farmland?
  - There were four witnesses who heard these comments from Jerry Becker, NAC.
  - There was no mention of a written authorization to install the approach.
- On 19 Apr 2016, **Eisenbeis** met with Wes Gunsch, Mercer County Commissioner, at the **Farmland** to discuss the diversion ditch on the **Farmland**, and the flooding of the **Farmland**. Wes Gunsch recommended contacting the **PSC**.
  - Eisenbeis had never heard of the PSC.

On 29 Apr 2016, Eisenbeis met with Brad Erickson, NAC.

• Eisenbeis was told the approach would be installed in two weeks.

Esther Eisenbeis died on 18 Jun 2016.

On 29 Jul 2016, **Eisenbeis** met with Brad Erickson, **NAC**. Brad Erickson stated that it was too wet to install the approach.

- Eisenbeis asked, if it was too wet, how could farmers plant crops?
- **Eisenbeis** was told the approach would be installed in two weeks.
- There was no mention of a written authorization to install the approach.

At some point (uncertain of the date), **Eisenbeis** was asked if **NAC** could discharge more **Pond** water into the **Farmland** creek.

• **Eisenbeis** responded that he would oppose this because of the **Farmland** flooding that had already occurred when **Pond** water was discharged into the **Farmland** creek.

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On 27 Oct 2016, Eisenbeis contacted the PSC (his first contact with the PSC).

On 13 Apr 2017, a **PSC** email stated that the **PSC** visited the site, and stated there were "no changes" from the previous inspection.

- **Eisenbeis** was surprised the **PSC** would state this. He had assumed the **PSC** would protect people and their property.
  - Eisenbeis did not know the PSC had inspected the Farmland before.
  - Eisenbeis did not know the PSC had photos of the Farmland from previous years.
  - Eisenbeis did not know the PSC had written reports about the Farmland.
- On 28 Apr 2017, **Eisenbeis** received an email from the **PSC**. That email included this statement, "... Coteau had been willing to provide you with an approach but that you would not sign an agreement to allow them to construct the approach."
  - This is not true. This was the first mention of a written agreement.

On 1 May 2017, Eisenbeis sent an email to the PSC and to NAC with a written authorization attachment.

- On 19 May 2017 and on 22 Sep 2017, **NAC** mailed their version of a written authorization to **Eisenbeis**. The **NAC** version contained this statement: "*Eisenbeis agrees to fully indemnify and hold harmless Coteau against any and all claims, losses, expenses, actions, causes of action and liability of whatsoever kind or nature arising from the use or existence of said approach and diversion."* 
  - Eisenbeis did not sign this document. Eisenbeis had already provided a written authorization.
  - If this is not related to coal mining, why did NAC include this statement?

The approach was never installed.

- Was this to penalize the **Eisenbeis Family** for not agreeing to allow **NAC** to discharge more **Pond** water into the **Farmland** creek?
- Was this to penalize the **Eisenbeis Family** for not agreeing to hold **NAC** harmless for all of the damage to the **Farmland**?

#### ----

On 18 Jan 2018, Eisenbeis met for the first time with the PSC staff. They discussed:

- NAC Pond water overflow,
- NAC Pond water discharge into the Farmland creek,
- NAC construction of a deep diversion ditch,
- NAC deepening the road ditch which blocks access to the Farmland.
- **Eisenbeis** discovered there were photos (dated 2008) of the **Farmland**.
- Later Eisenbeis discovered there also were photos (dated 2011 and 2014).

On 26 Apr 2018, **Eisenbeis** met at the **Farmland** with Guy Welch and Bruce Beechie (**PSC**), Jerome and Jamie Boeshans (**Farmland** renters).

- Guy Welch picked up some **Pond** water netting in new erosion gullies.
  - The new gullies start near the location where NAC had lowered the berm by the fence.
  - This lowered berm provides a path for water to flow onto the Farmland.
  - NAC did not repair the new gullies.
- The Farmland renters had found lots of Pond netting in multiple locations in previous years.
  - The **Pond** netting kept plugging their farm equipment.

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On 10 Jun 2019 Eisenbeis received a NAC letter dated 19 Jun 2018 (Appendix B), written to the PSC.

• This NAC letter was "not" sent to Eisenbeis until "a year later".

The 19 Jun 2018 **NAC** letter states, "The diversion was in poor condition. It was silted in areas and blown out in others. There were also small trees or shrubs growing in the diversion channel."

• This NAC statement is not true. See photos dated 2008.

The19 Jun 2018 **NAC** letter states, "*Clyde Eisenbeis, Esther Eisenbeis's son became involved in the design and location of the proposed diversion.*"

- This is not true. Clyde Eisenbeis lived in Iowa.
- If Clyde Eisenbeis had been involved in the design and location:
  - He would not have blocked access to the Farmland by deepening the road ditch.
  - o He would not have displaced farmland with a diversion ditch
  - He would not have removed prairie grass (which can have roots 10 to 12 feet deep) that absorbs water.
  - He would have put a high berm next to the fence to prevent water from entering the **Farmland**. Water would have been diverted to the road ditch.

The 19 Jun 2018 **NAC** letter states, "*This ditch / diversion issue is a private matter between Coteau and the Eisenbeis family.*"

• This is like a robber telling a victim that this is a private matter.

The 19 Jun 2018 **NAC** letter states, "As demonstrated, mining operations were never the source or cause of erosion in Eisenbeis fields."

• The 2011 **PSC** photos show otherwise. That coupled with:

- o the PSC investigating,
- o the PSC taking photos,
- o Pond water netting found in numerous locations on the Farmland,
- o the Farmland renter Wayne Eisenbeis telling Eisenbeis that the Pond overflowed,
- Jerry Becker, NAC, calling Eisenbeis asking for permission to repair the gullies and install a diversion ditch.
- The 2014 **PSC** photos also show otherwise. That coupled with:
  - o the **PSC** investigating again,
  - o the PSC taking photos again,
  - Pond water netting found in numerous locations on the Farmland again,
  - o the Farmland renter Wayne Eisenbeis telling Eisenbeis that the Pond overflowed again,
  - o Jerry Becker, NAC, calling Eisenbeis again asking for permission to repair the gullies.

- This is a misleading statement. On 28 Apr 2017, **Eisenbeis** received an email from the **PSC**. That email included this statement, "... Coteau had been willing to provide you with an approach but that you would not sign an agreement to allow them to construct the approach."
  - o This is not true. The 28 Apr 2017 email was the first mention of a written agreement
- On 1 May 2017, **Eisenbeis** sent an email to the **PSC** and to **NAC** with a written authorization attached.
- On 19 May 2017 and on 22 Sep 2017 (Appendix C), NAC mailed their version of a written authorization to Eisenbeis. The NAC version contained this statement: "Eisenbeis agrees to fully indemnify and hold harmless Coteau against any and all claims, losses, expenses, actions, causes of action and liability of whatsoever kind or nature arising from the use or existence of said approach and diversion."
  - Eisenbeis did not sign this document. Eisenbeis had already provided a written authorization.

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- A 5 Jul 2018 **NAC** letter states, "However, these emails and your 'written authorization' were not sufficient written documents to satisfy the terms between the parties."
  - This is the first time NAC acknowledged that they did receive the Eisenbeis written authorization.
  - What terms? **NAC** deepened the road ditch without authorization from **Eisenbeis**, and without authorization from Mercer County.
  - NAC damages property others own, then requires them to sign a document that states NAC is not responsible for the damages.

The 2018 **NAC** letter states, "Coteau has not caused any damage to your land and we are losing patience with these continued baseless allegations against us, which are most often not made directly to us, but through e-mails sent to the **PSC**.

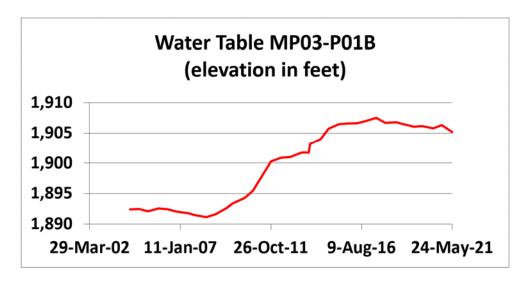
- **Eisenbeis** views this as a threat.
- NAC did cause extensive damage as is described in this document.
- This is like a robber telling a victim that this is a private matter. Do not contact the police.

Flooding of the SW corner of the Farmland is not mentioned in the NAC letter.

The 19 Jun 2018 **NAC** letter states, "Coteau has tried to work with Clyde Eisenbeis, including an offer to alleviate his concerns at no expense to him, and he did not accept that offer."

Brian Beechie, **PSC**, provided elevations for multiple water tables north and south of the **Farmland**. Water table MP03-P01B is located about a half mile south of the **Farmland**.

The water table elevation at the MP03-P01B measurement station started increasing when **NAC** started discharging **Pond** water into the **Farmland** creek circa 2011. This water table elevation is higher than the southwest corner **Farmland** elevation. This has resulted in flooding **Farmland**.



While creek water flows north into Lake Sakakawea, the ground elevation is fairly level (see **PSC** photos). This can result in water flowing both north and south. Wayne Eisenbeis, who farms the land south of the **Farmland**, has had farm equipment getting stuck often, after **Pond** water started being discharged into the **Farmland** creek, which raised the water table elevation.

Lucille Sailer lives in a farmhouse (see map on page 2) about a quarter mile west of the creek. **NAC Pond** water discharge into the creek has caused her farmland to flood. This also resulted in cattails on her farmland.

The cattails are no longer there. Her farmland soil quality has deteriorated due to **Pond** water flooding her farmland numerous times. Her farmland is used for haying only. Wheat will no longer grow there.

The **Farmland** creek was filled with water. There had never been standing water in the **Farmland** creek. The **Farmland** creek is now empty, as it had been before **Pond** water started being discharged into the **Farmland** creek.

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In 2018, a Zap water pipeline was installed on the west side of the **Farmland**. Water had to be pumped from the pipe trench for many hours, before installing the pipe.

- This "reduced" the flooding of the Farmland and the level of the water in the Farmland creek.
- This "reduced" the water table elevation (see chart).

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On 12 Jun 2019 the **PSC** Commissioners changed the **Eisenbeis** Formal Complaint to an Informal Complaint.

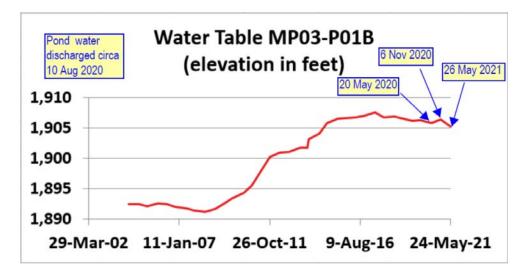
• The **PSC** Commissioners:

- o Discussed the PSC Division (Dean Moos) recommendation letter draft.
- Did not discuss the contents of the complaint, the **Eisenbeis** comments added to the **PSC** Division recommendation letter draft, or the **Eisenbeis** comments added to the **NAC** dishonest letter.
- o Asked Dean Moos about the ditch prior to NAC modifying it.
  - Dean Moos did not state that PSC photos of the original diversion ditch and original road ditch were on page 5 of the complaint.
- **Eisenbeis** was not allowed to speak at either meeting.
  - This seemed to be the opposite of Due Process, as is mentioned in the US Fifth Amendment and Fourteenth Amendment.

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On 10 Aug 2020, **Eisenbeis** received a phone call from Lucille Sailer. **NAC** is discharging pond water into the farmland creek from a mining operation south of our farmland. Her land is flooded again.

- The **PSC** inspected the Lucille Sailer farmland on 12 Aug 2020, immediately after this flooding was broadcast on TV news.
- NAC ceased discharging pond water into the Farmland creek immediately.
  - Was it legal for NAC to discharge Pond water into the south end of the Farmland creek in 2020?
- This "increased" the water table elevation.



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In 2022, **Eisenbeis** learned that Rodney Weigum has been losing cattle. It was discovered that the cattle are dying from sulfide. The sulfide appears to be coming from the water the cattle are drinking.

Lignite coal contains sulfur. Quite likely, the **Pond** water also contains sulfur. This water, which is held in a **Pond**, quite likely seeps into the ground, which would contaminate aquifers. Ditto for **Pond** water which is discharged into the **Farmland** creek.

Sulfide can also kill people.

### *PSC Photos*: PSC Photos dated 8 Oct 2008

Original diversion ditch (not a ditch that was visible). Cropland is next to the shrubs, 10 foot distance.



Original diversion ditch (not a ditch that was visible).



Original road ditch.



### PSC Photos dated 31 Aug 2011

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Pond water overflow erosion between original diversion ditch and original road ditch.



Pond water overflow erosion between original diversion ditch and original road ditch.



Original road ditch with Pond water overflow erosion visible on far end.



**Original diversion ditch** with **Pond** water overflow erosion not visible.



## PSC Photos dated 31 Aug 2011

Pond water overflow erosion of Farmland.







## PSC Photos dated 31 Aug 2011

Original diversion ditch with Pond water overflow erosion barely visible before NAC deepened the original diversion ditch.







## PSC Photos dated 16 Sep 2014

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## PSC Photos dated 16 Sep 2014

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More **Pond** water overflow erosion of diversion ditch after **NAC** modified the **original diversion ditch**.









### PSC Photos dated 26 Apr 2018

#### Farmland erosion - new gullies.

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#### More **Pond** water netting found on the Farmland.



**NAC** lowered the berm by the fence. This lowered berm provides a path for water to flow from **NAC** land onto the **Farmland** which created gullies.

Farmland erosion – new gullies.





#### PSC photos dated 6 Mar 2008.

The diversion ditch was not in poor condition. It was not silted in areas and blown out in others (see NAC dishonest letter).



There were shrubs at the north end of the diversion ditch, close to the road. There were no trees or shrubs in the diversion ditch.



### PSC photos dated 31 Aug 2011.

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There were no trees or shrubs in the diversion ditch.



There were shrubs at the north end of the diversion ditch, close to the road. There were no trees or shrubs in the diversion ditch. The cropland extended up to the shrubs.



## PSC photo dated 31 Aug 2011.

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There was erosion in multiple locations on the Farmland due to Pond water overflow.







**PSC photo dated 16 Sep 2014.** There was erosion in multiple locations on the Farmland due to Pond water overflow.









## PSC photos dated 6 Mar 2008

Original diversion ditch (if a ditch, it was not visible).



## PSC photos dated 16 Sep 2014

NAC modified the original diversion ditch.

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Unknown if there are photos of water in the Farmland creek.

• Water in the Farmland creek was seen by Eisenbeis, Guy Welch (PSC), and Jayme and Jerome Boeshans (Farmland renters).

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## Photo taken on dated 26 Jul 2022

Farmland creek is empty, as it had been before Pond water was discharged into the Farmland creek.



**NAC** dug the road ditch deeper so that grain trucks can no longer cross the ditch. The combine needs to travel across the ditch to unload the grain onto a truck.

The road ditch continues to erode. At this rate, it will eventually be impossible for a combine to cross the road ditch. There will be zero access to the Farmland.

PSC Photo 8 Oct 2008 ... Original road ditch.



**PSC Photo 28 Jun 2022** ... The road ditch, deepened by **NAC**, is too deep for a grain truck loaded with grain. There are trees, that were not there before. Some need to be cut for the combine to cross the ditch.



PSC Photo 26 Apr 2018 ... The road ditch, deepened by NAC, is starting to erode.



AGWEEK Photo 3 Jun 2021 ... The road ditch erosion continues to grow.



Page 28 of 45

**PSC Photo 28 Jun 2022** ... The road ditch continues to **erode more**. Eventually, a combine will be unable to access the **Farmland**.





## Photo Summary #2:

PSC Photo 8 Oct 2008 ... Cropland extended close to NE corner of quarter (10 feet between crop and fence).



PSC Photo 31 Aug 2011 ... Cropland extended close to NE corner of quarter.



PSC Photo 28 Jun 2022 ... Diversion ditch size increased by NAC. Some Farmland has been lost.



**PSC Photo 28 Jun 2022** ... Diversion ditch size increased by **NAC**. Some **Farmland** has been lost. The **original diversion ditch** was ten feet wide.



## *Photo Summary #3*:

PSC Photo 26 Apr 2018 ... NAC added a water path from NAC land onto the Farmland. This results in more Farmland erosion.



PSC Photo 26 Apr 2018 ... More Farmland erosion. NAC did not repair this erosion.



PSC Photo 28 Jun 2018 ... Farmland erosion continues.



Lower left (southwest corner) was not farmable due to flooding. It was a reduction of 10 acres per the three-year 2017 farm lease. It was a reduction of 5 acres per the three-year 2020 farm lease. The soil is very poor in that area because of the sustained flooding.



9 <mark>396</mark>	280' <del>x55'</del> 4	501'x68'	398 <mark>,×22</mark> ,		7		415'X58'			112'x33'		
Road ditch width is 12 'wider R 88W		Elon and a second se								400 ATA an #	43,500 sq ft per acre	2.8 acres
45'x645 Section 34, T146N,				farmland	Buildening	7,740	32,670	12,600	29,058	17,910	2,576	122,474
tion 34					Buildenin	12		45	58	45	23	I
of Sec				loitioi	sq ft	21,285		2,800	5,010	3,980	1,120	
NW1/4 of				initiol	10 III	33		10	10	10	10	
2					sq ft	29,025	396 108,900 32,670	15,400	34,068	21,890	3,696	
ield aligns and.	fence d to lo	1, the th, the /est.		anothinot	15 TEAWNER	645		55	68	55	33	
Road ditch width is 33'. North edge of the crop field aligns with the fence on NAC land.	Measurements are from fence to crop, from edge of road to crop, and between post markers where there is no fence or road.	For the dimensions listed, the first number is north/south, the second number is east/west.		the local the		45	275 cut to 30%	280	501	398	112	
Road ditch width is 33 North edge of the crop with the fence on NAC	Measurements are from to crop, from edge of ro crop, and between post markers where there is fence or road.	For the dim first number second num			Ĕ	road ditch	corner	fence ditch	fence ditch	fence ditch	fence ditch	

PSC Photo 28 Jun 2018 ... Northeast corner of Farmland where farmland is missing.



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Eisenbeis has spent hundreds of hours since 2015 because of the NAC damage to the Farmland.

This has consumed a lot of his time. The Eisenbeis Family has done nothing wrong.

Why is the **Eisenbeis Family** being penalized? The purpose of NDCC is to protect people, and their property.

"Even" if this were "not" related to coal mining, would NAC be allowed to damage other people's property?

Bottom line #1: Suppose someone burglarized the house of Esther Eisenbeis, and she has a video clip identifying the burglar.

- 1) The police would investigate immediately.
- 2) The police would visit with Esther Eisenbeis about the burglary.
- 3) The police would not require Esther Eisenbeis to write a complaint.
- 4) The police would document what they find and what they hear.
- 5) The police would not require Esther Eisenbeis to know which ND laws are relevant.
- 6) The police would not require Esther Eisenbeis to hire an attorney before talking to the police.
- 7) The burglar would be taken to court by the state, not by Esther Eisenbeis.

I'm surprised that the **PSC** does not have a procedure similar to a police procedure.

**Bottom line #2**: How many elderly could write a formal complaint that included photos? None of the elderly Eisenbeis relatives couldn't even use a computer. Many elderly cannot afford to hire an attorney.

Bottom line #3: Did the PSC contact the Mercer County Sheriff after the PSC saw what NAC had done.

Bottom line #4: If a farmer tells NAC that NAC could dig coal on his property, could NAC start digging the coal without PSC approval?

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**Bottom line #5**: If a pond ever overflows, **NAC** should be required to pay the land owner(s) \$100,000. This would increase the odds that the pond "never" overflows.

This includes **Pond** water in ditches and creeks that are affected by **Pond** water overflow.

Bottom line #6: All PSC photos and PSC inspection reports should be given immediately to the land owners.

Bottom line #7: The PSC Commissioners should read the complaint, prior to making a decision.

Bottom line #8: When the PSC discovers NAC damage to land that "is not" owned by NAC, the PSC should:

- Contact the county sheriff
- Contact the land owner.
- Write a complaint for the landowner.
- Require **NAC** to obtain a **permit**.

• Require **NAC** to restore the land to its original condition.

Bottom line #9: When a landowner contacts the PSC about NAC damage to their land, the PSC should:

- Write a complaint for the landowner.
  - o Perhaps use a different word than "complaint".
- Require **NAC** to obtain a **permit**.
- Require **NAC** to restore the land to its original condition.

Bottom line #10: The PSC Commissioners should allow complainant(s) to participate in the discussion when the PSC Commissioners meet to discuss an Informal Complaint and a Formal Complaint.

**Bottom line #11**: The Lucille Sailer farmland soil quality has deteriorated due to **Pond** water flooding her farmland numerous times. Her farmland is used for haying only. Wheat will no longer grow there.

In addition, Lyle Eisenbeis farmland close to the **Farmland** creek has deteriorated due to **Pond** water discharging into the **Farmland** creek numerous times. His crop's growth is stunted in that area.

Bottom line #12: Digging a diversion ditch and deepening the road ditch has done nothing good.

The **Farmland** continues to erode. The road ditch, which never had any erosion (see 2008 photos), continues to erode. There is less **Farmland** that can be used for crops.

If NAC had not installed a diversion ditch, and if NAC had not deepened the road ditch, everything would be better.

The **Eisenbeis Family** should not be penalized for **NAC**'s actions.

Complaint #1: NAC modified the Farmland by disturbing the natural land surface without a permit.

Requested Relief #1: Require NAC to obtain a permit immediately.

See Executive Summary Complaint for more details.

**Complaint #2:** NAC Pond water overflowed onto the Farmland which resulted in gullies, loss of topsoil, and loss of crop income.

**Requested Relief #2:** Require **NAC** to reimburse farmland renters and farmland owners for those losses of time and income.

See Executive Summary Background for details.

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**NAC Complaint #3: NAC Pond** water was discharged into the **Farmland** creek which resulted in "flooding" the southwest corner of the **Farmland** which resulted in the loss of crop income. This occurred without **Landowner** consent.

#### Requested Relief #3:

- Require NAC to reimburse Farmland renters and Farmland owners for those losses and for "future losses" of less land available for farming.
- Require **NAC** to reduce the water table elevation to the level it was prior to 2011.
- Require NAC to restore the 10 acres of soil in the southwest corner of the Farmland so it is good quality soil again.

See Executive Summary Complaint for more details.

**NAC Complaint #4: NAC Pond** water discharge into the **Farmland** creek resulted in standing water in the **Farmland** creek which resulted in trees growing in the deepened road ditch (high water table).

Requested Relief #4: Require NAC to remove those trees, including the tree roots.

See Executive Summary Complaint for more details.

NAC Complaint #5: NAC constructed a deep diversion ditch on Farmland which displaced Farmland. This occurred without Landowner consent.

- Deepening the diversion ditch destroyed some prairie grass which helped absorb water.
  - Prairie grass roots can grow to depths of 10 to 14 feet.
  - NAC replaced prairie grass with shallow root grass, which does not absorb much water.

#### Requested Relief #5: Require NAC to:

- Restore the diversion ditch to its original state.
- Plant prairie grass in the diversion ditch.
- Install a three-foot high, three-foot wide, berm next to the fence the full length of the diversion ditch to divert water to flow into the road ditch, and not onto the **Farmland**.
  - The berm should be comprised of 3,500 psi concrete with multiple layers of rebar to prevent further erosion of the **Farmland**.

#### See Executive Summary Complaint for more details.

AC Complaint #6: NAC installed a path for water to flow from NAC land to the Farmland.

Requested Relief #6: Require NAC to

- Remove this path.
- Install a berm as described in Requested Relief #5.

See Executive Summary Complaint for more details.

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**NAC Complaint #7: NAC** modified the Mercer County road ditch which blocks access to the **Farmland**. This occurred without **Landowner** consent, and without a Mercer County permit.

#### Requested Relief #7:

- Require NAC to install an approach that is large enough to accommodate a semi grain truck.
  An approach is needed as the prairie grass is no longer there to help absorb water from NAC land.
- Require **NAC** to restore the road ditch to its original width to recover lost farmland.

See Executive Summary Complaint for more details.

NAC Complaint #8: NAC Pond water is seeping into the ground via Ponds and discharging Pond water into the Farmland creek. This, quite likely, resulted in contaminating the aquifer with sulfur. This would explain the reason for a neighbor's cattle dying from sulfide.

#### Requested Relief #8:

- Require **NAC** to install water proof lining on the bottom of all **Ponds**.
- Require **NAC** to discharge **Pond** water directly into Lake Sakakawea via a "pipe".
  - This guarantees **Pond** water will not affect water tables, aquifers, farmland, and will not penalize the land owners.

See Executive Summary Complaint for more details.

**NAC Complaint #9: NAC** discharged pond water in 2020 from a mining operation between one and two miles south of the **Farmland**.

- This occurred without any landowners' consent.
- It appears to be without authorization from the PSC, as NAC stopped discharging that water immediately when the PSC investigated.

• Flow of water, regardless of a small amount of water, will cause some erosion.

**Requested Relief #9:** Require **NAC** to obtain a **PSC permit** for all land affected by that pond water discharge into the **Farmland** creek, owned by:

- o Eisenbeis Family,
- o Wayne Eisenbeis,
- o Lyle Eisenbeis,
- o Lucille Sailer,
- Do not allow any more pond water discharge into the Farmland creek without written land owner approval.

See Executive Summary Complaint for more details.

NAC Complaint #10: NAC sent a dishonest letter to the PSC which may have affected the PSC decision of the Eisenbeis initial complaint.

Requested Relief #10: Hold NAC accountable for this dishonest action.

• Was it legal for NAC to send a dishonest letter to a ND state government agency?

See Executive Summary Complaint for more details.

NAC Complaint #11: NAC sent a threatening letter to Eisenbeis.

Requested Relief #11: Hold NAC accountable for sending a threatening letter to Eisenbeis.

See Executive Summary Complaint for more details.

NAC Complaint #12: Eisenbeis has spent hundreds of hours:

- 1) Investigating
- 2) Emails to PSC / NAC
- 3) Documenting more than 10 years of history
- 4) Traveling to the **Farmland** numerous times
- 5) Meeting with NAC
- 6) Meeting with the **PSC**
- 7) Meeting with Mercer County Commissioners in Stanton, ND
- 8) Emailing to the Mercer County Commissioners
- 9) Meeting at the Farmland with Mercer County Commissioners
- 10) Meeting with the ND Water Board
- 11) Writing a Formal Complaint to the PSC (the PSC renamed it to an informal complaint)
- 12) Researching NDCC, NDAC, and PSC Memorandum to find relevant laws
- 13) Contacting people to find who understands relevant ND laws
- 14) Contacting Office of Surface Mining Reclamation and Enforcement (Casper, Wyoming and Denver, Colorado)
- 15) Contacting the ND Attorney General's office
- 16) Contacting the ND Ethics Commissioners.
- 17) Creating a website [https://Beulah.FoxPing.com] regarding the actions of NAC over a span of more than ten years

18) Writing this Formal Complaint

The time spent is estimated to be between 2,000 hours and 3,000 hours.

Requested Relief #12: Require NAC to provide adequate compensation.

- Hold NAC accountable for wasting Eisenbeis' time and hassling him.
  Require NAC to pay Eisenbeis for his time spent on the items described in this document.
- Hold NAC accountable for Eisenbeis travel expenses to the Farmland.
- Take NAC to court.

The Eisenbeis Family did nothing wrong.

See Executive Summary Complaint for more details.

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