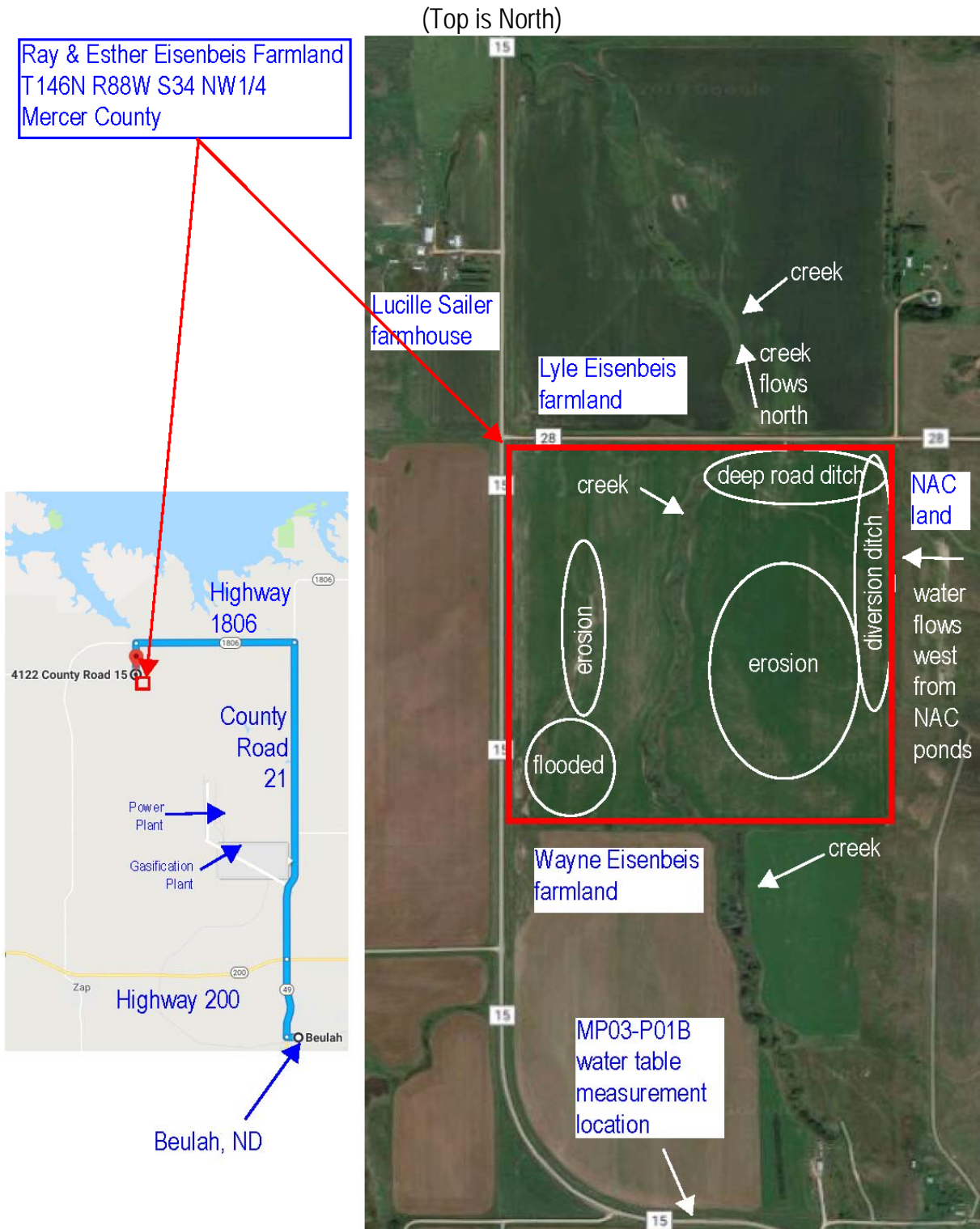


Reclamation Formal Citizen Complaint to: North Dakota Public Service Commission (PSC) and Office of Surface Mining Reclamation and Enforcement (OSMRE)

Complainants: Clyde Eisenbeis, Allen Eisenbeis, JoAnn Crabtree (Farmland owners)

Respondent: North American Coal / Coteau

Farmland: T146N R88W S34 NW1/4 in Mercer County, North Dakota



Definitions:

- **Farmland:** T146N R88W S34 NW1/4 in Mercer County, North Dakota
- **NAC:** North American Coal / Coteau
- **Landowner:**
 - 6 Sep 2011 to 18 Jun 2016, Esther Eisenbeis (Clyde Eisenbeis, POA).
 - 18 Jun 2016 to present, Clyde Eisenbeis, Allen Eisenbeis and JoAnn Crabtree

Reclamation Formal Citizen Complaint Executive Summary**NAC surface coal mining operations offsite impacts:**

1. Constructed a diversion ditch on farmland creating a new affected area outside the permit area without a PSC permit revision and without Landowner consent, no associated reclamation plan or performance bond, and resulted in loss of crop income.
2. Discharged more than 7 billion gallons of surface coal mine disturbed area pond water from within the permit area onto the adjacent farmland which resulted in gullies, loss of topsoil, and loss of crop income from the farmland (impact outside the permit area without a PSC permit revision and without Landowner consent).
3. This same 7 billion gallons of surface coal mine disturbed area pond water entered the farmland creek which resulted in flooding the southwest corner of the farmland which caused the loss of crop income (impact outside the permit area, without a PSC permit revision and without Landowner consent).
4. Modified a Mercer County road ditch making it deeper in order to convey the large volume of water discharge away from the coal mine that resulted in blockage of historical direct ramp access to the farmland (such construction was done outside the permit area without a PSC permit revision, without Landowner consent, and without a Mercer County permit).

Controlling Provisions: NDCC Chapter 38-14.1, NDAC Article 69-05.2, OSMRE eCFR 721, and OSMRE eCFR 842. Pond water was discharged (NDAC 69-05.2-01(25)) to facilitate surface coal mining and reclamation operations (NDCC 38-14.1-02(34, 35)) by the permittee (NDCC 38-14.1-02 (21)) on the **Farmland**, which is the adjacent area (NDAC 69-05.2-01-02(1)) immediately outside of the **PSC** approved Permit area (NDCC 38-14.1-02(17)). The discharge of this pond water onto the **Farmland** was completed without **Landowner** consent (NDCC 38-14.1-14(k)) and application to the **PSC** for the necessary permit revision (NDCC 38-14.1-02(19)). The definition in NDCC 38-14.1 for surface coal mining operations requires a permit for "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." This surface mining activity on the **Farmland** created a new disturbed area (NDAC 69-05.2-02(24)) that has not been properly permitted, regulated and operated with no approved reclamation plan to protect the landowner from permanent damages and as such, is not in compliance with NDCC 38-14.1 and associated NDAC 69-05.2.

Requested Relief Executive Summary:

- Requested relief details are described in Reclamation Formal Citizen Complaint #1, #2, #3, and #4.
- Replace all **NAC** ponds with native prairie grass.
- Eliminate the gullies on the **NAC** land to eliminate the pond water discharge flow path gullies that lead to the **Farmland**.
- Compensate the **Landowner** and farmland renters (for crop income loss, and extra time spent planting and harvesting crops) from the past, and in the future if it occurs again.

Background Executive Summary.

- John Eisenbeis, and descendants, have owned the **Farmland** since the early 1900's.
- **NAC** discharged more than **7 billion gallons** (7,765,153,000 gallons) of pond water into the farmland creek (starting on 1 Jan 2011 and continuing until 25 Jun 2018).
- The **NAC** pond water discharge damaged the **Farmland**.
- The **NAC** attempts to repair the damage created more damages and blocked access to the **Farmland**.
- The **Background** is clarified further in **Formal Citizen Complaint #1, #2, #3, and #4**.

Appendix A - **Ray & Esther Eisenbeis Farmland (damages by NAC) History**

Appendix B - **PSC Letter** (dated 23 Jul 2018)

Appendix C - **PSC Inspection Report** (dated 26 Apr 2018)

Appendix D - **NAC Letter** (dated 5 Jul 2018)

Appendix E - **NAC Approach Agreement** (dated 22 Sep 2018) unsigned

Appendix F - **Department of Health Pond Water Discharge Document** (from 1 Jan 2011 through 25 Jun 2018)

The Appendices can be found at "<https://Beulah.FoxPing.com>".

The **PSC Letter** states, "*We do not view reconstruction of the diversion as a mining related matter and therefore, it is not subject to our jurisdiction.*" ... "*As with the reconstruction diversion, we do not view the road ditch and access as a mining related matter that is the jurisdiction the Commission.*"

- The **PSC Letter** contradicts the facts (see **NAC** surface coal mining operations listed above). Discharging pond water and attempts to fix the problems are mining related. All **Farmland** damages and disturbances are mining related.

A 7 Sep 2018 **PSC Email** from Dean Moos, **PSC**, states, "*As outlined in our July 23rd letter to you, the Reclamation Division views the reconstruction of the diversion on your property as a matter between Coteau and the landowner. Since reconstruction of the diversion was not a mining related activity, it was not subject to our jurisdiction or approval.*" ... "*The Reclamation cannot require Coteau to repair erosion that is not the result of mining and reclamation activities.*"

- The **PSC Email** contradicts the facts (see **NAC** surface coal mining operations listed above). All **Farmland** damage and disturbances are mining related.

None of the **Landowners** had ever been notified that **NAC** had been discharging pond water into the **Farmland** creek. Clyde Eisenbeis learned this in Dec 2018 by requesting permit history from the **PSC**.

The **NAC Letter** contains, "*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.*"

- On 6 Jul 2018, Clyde Eisenbeis emailed this response, "*Which facts do you categorize as baseless allegations? Identify all of the statements that you categorize as baseless allegations on the first page, item by item, including the numbered items.*"
- There has been no response to the Clyde Eisenbeis email.

Clyde Eisenbeis is unaware of any written authorizations between **NAC** and **Landowner** regarding **Farmland** damage and disturbances.

Reclamation Formal Citizen Complaint #1: Constructed a diversion ditch on farmland creating a new affected area outside the permit area without a PSC permit revision and without Landowner consent, no associated reclamation plan or performance bond, and resulted in loss of crop income.

Controlling Provisions #1: See Controlling Provisions described in the Executive Summary.

Requested Relief #1:

- Remove the diversion ditch from the **Farmland**.
- Replace the diversion ditch with good quality topsoil, returned to the original state.
- Plant native prairie grass on that topsoil.
- Install a berm, or solid fence, east of the **Farmland** fence, on **NAC** property to serve as a permanent diversion (a diversion ditch may not work consistently, as the diversion ditch can have ice buildup in the spring which would serve as an ice bridge across the diversion ditch).

Background #1:

In the fall of 2011, Jerry Becker, **NAC**, called Clyde Eisenbeis to report the erosion damage (Clyde Eisenbeis lived in Iowa).

- Jerry Becker stated that **NAC** planned to install a diversion ditch on the east side to divert the **NAC** water runoff.
 - Clyde Eisenbeis objected and stated the diversion ditch should be installed on **NAC** property, east of the **Farmland**.
 - Clyde Eisenbeis was redirected to Bill Kirk, **NAC**.
- On 15 Nov 2011, Clyde Eisenbeis called Bill Kirk. Bill Kirk stated the diversion ditch could not be put on **NAC** land because there were five power line poles too close to the **Farmland** for a diversion ditch.
 - When questioned, Bill Kirk stated the closest pole was 24 feet from the **Farmland**.
 - Clyde Eisenbeis responded that 24 feet was plenty of room for a diversion ditch.
- On 29 Nov 2011, Clyde Eisenbeis called Bill Kirk again.
- Clyde Eisenbeis again stated the diversion ditch should be installed on **NAC** property.
 - Making the diversion ditch steeper would not require more than 24 feet.
- **NAC** installed the diversion ditch on the **Farmland** without authorization by the **Farmland** owner.

Next to the fence on the east side of the **Farmland**
"Prior" to **NAC** diversion ditch installation

6 Mar 2008 PSC Photo (Facing Southwest)



6 Mar 2008 PSC Photo (Facing Northwest)



There is no newer **PSC** Photo



In the fall of 2014, Jerry Becker, **NAC**, called Clyde Eisenbeis again to report more erosion damage (Clyde Eisenbeis lived in Iowa).

- Jerry Becker stated **NAC** planned to enlarge the diversion ditch on the east side. Clyde Eisenbeis, again, objected to the diversion ditch.

The **PSC Letter** states, "*Coteau has indicated that they were approached by tenant Wayne Eisenbeis in 2010 and 2011 about the erosion in the NW 1/4 of Section 34.*" ... "*In 2011, the tenant reportedly also asked that the diversion be rebuilt to prevent the re-occurring erosion.*"

- The **PSC** knew that Wayne Eisenbeis, **Farmland** renter, was not authorized to approve the installation of a diversion.

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***Bottom line #1: See Requested Relief #1.***  
~~~~~

Reclamation Formal Complaint #2: Discharged more than 7 billion gallons of surface coal mine disturbed area pond water from within the permit area onto the adjacent farmland which resulted in gullies, loss of topsoil, and loss of crop income from the farmland (impact outside the permit area without a PSC permit revision and without Landowner consent).

Controlling Provisions #2: See Controlling Provisions described in the Executive Summary.

Requested Relief #2:

- Repair existing erosion damage.
- Replace "all" of the "high quality" topsoil lost to erosion with "high quality" topsoil.
- Remove "all" erosion control fabric scattered around on the **Farmland**.
- Repair erosion damage if future erosion damage occurs.

Background #2:

The first known case of gullies on the **Farmland** occurred in the fall of 2011.

- The **PSC Letter** states, "*Coteau indicated they have repaired erosion on your property in 2010, 2011, and 2014.*"
- Clyde Eisenbeis was "not" made aware of erosion in 2010.

In the fall of 2011, Jerry Becker, **NAC**, called Clyde Eisenbeis to report erosion damage to the **Farmland** (Clyde Eisenbeis lived in Iowa).

- Jerry Becker assured Clyde Eisenbeis the **Farmland** would be repaired.
- (The **Department of Health Pond Water Discharge Document** shows that more than 50 million gallons of pond water had been discharged in 2011. Clyde Eisenbeis was not told pond water was being discharged.)

In the fall of 2014, Jerry Becker, **NAC**, called Clyde Eisenbeis again to report erosion damage to the **Farmland** (Clyde Eisenbeis lived in Iowa).

- Jerry Becker assured Clyde Eisenbeis the **Farmland** would be repaired again.
- (The **Department of Health Pond Water Discharge Document** shows that more than 4 billion gallons of pond water had been discharged from 2011 thru 2014)

In the spring of 2017, the **Farmland** was damaged again by erosion.

- **NAC** still has not repaired the new erosion.

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

- Jerome Boeshans and Jayme Boeshans stated that the new erosion was there in the spring of 2017 when they planted a crop.
- Jerome Boeshans and Jayme Boeshans stated that a considerable amount of erosion control fabric had plugged their farming equipment in 2017. They had to stop and remove the fabric multiple times.

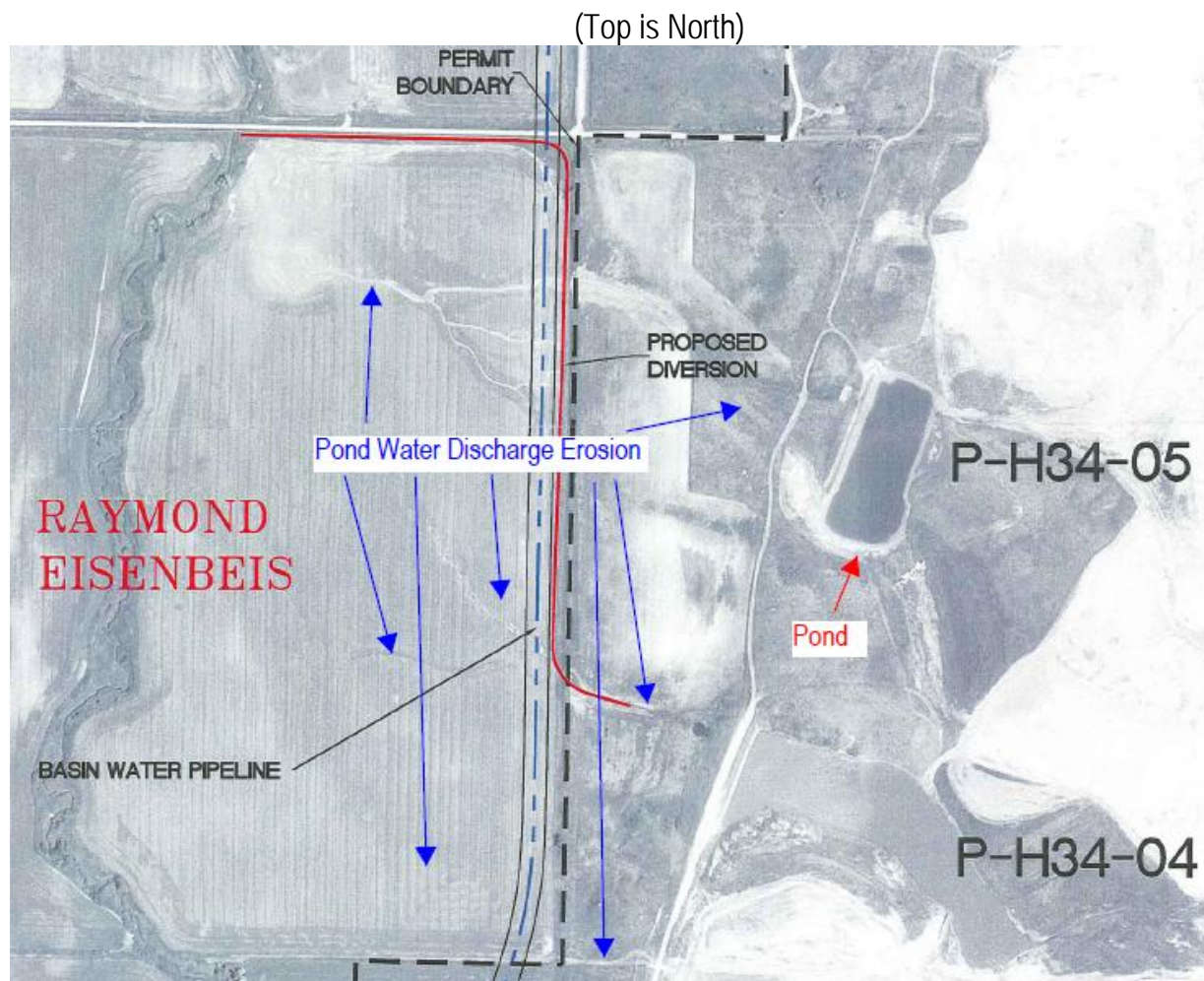
The PSC Letter states, "*Any erosion ... is not likely to have been caused by runoff from the upstream watersheds.*"

- The PSC Inspection Report states, "*The erosional features varied in size and the largest one was approximately 16 inches deep, 2 feet wide, and 25 feet long.*" ... "*Several handfuls of erosion control fabric and an anchoring staple were collected in the field during the inspection.*"
- The PSC Letter contradicts the PSC Inspection Report.
- The PSC Letter contradicts the North Dakota Department of Health Document that NAC discharged, 163 times, a total of more than 1 billion gallons (1,273,980,000 gallons) of pond water from Jan 2017 thru Jun 2018.

The PSC Letter states, "*Historical aerial photographs provide evidence of erosion prior to mining and reclamation.*"

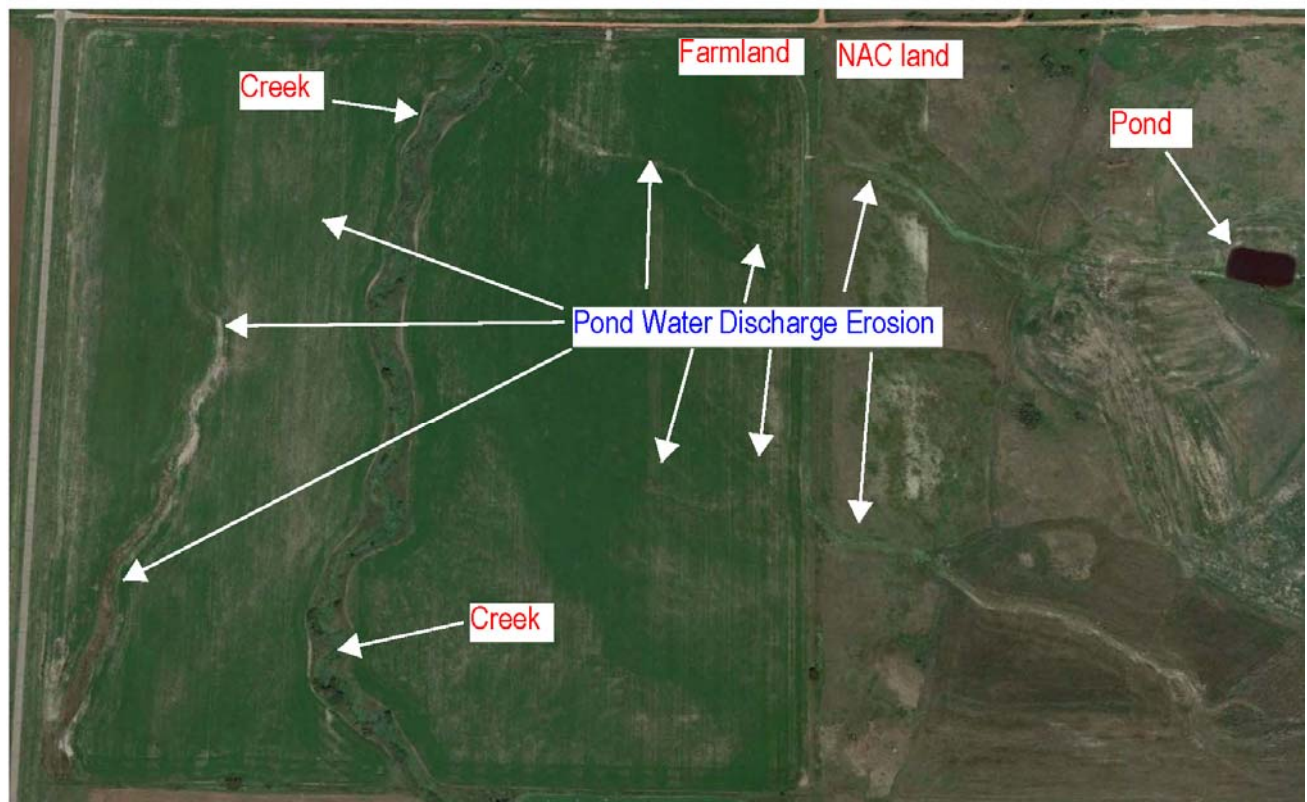
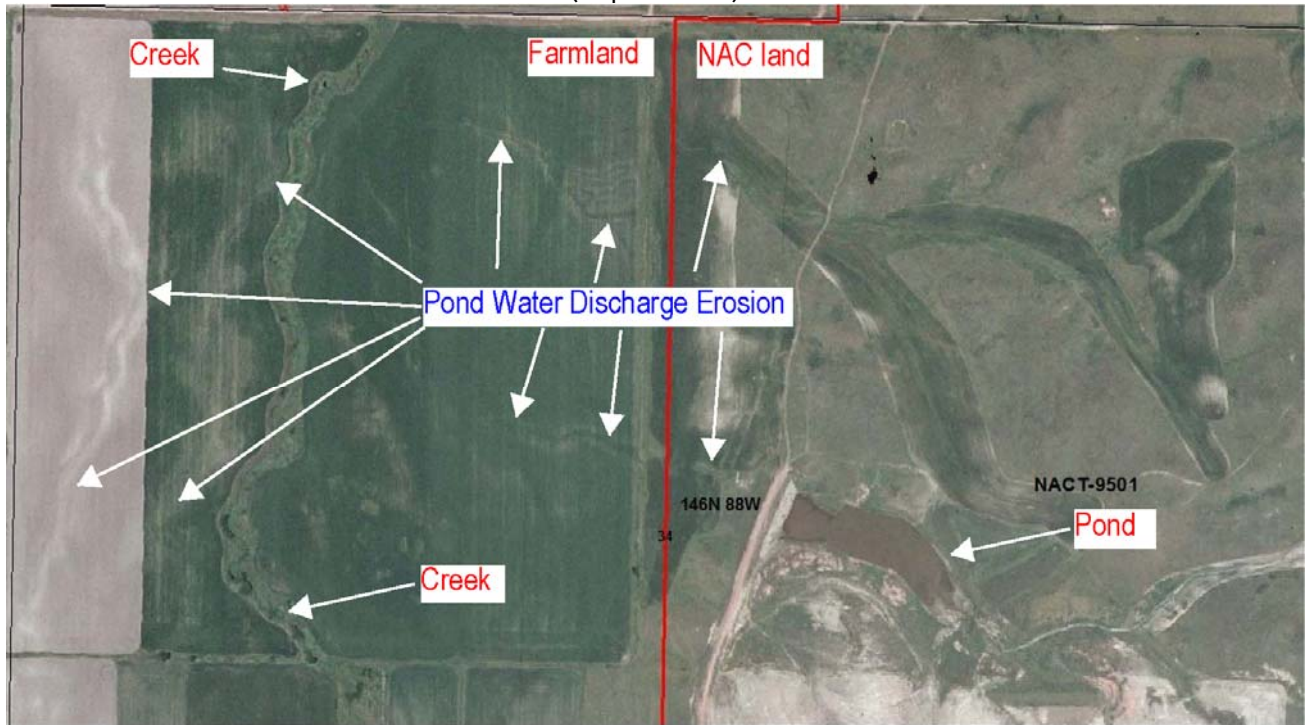
- The aerial photos show that the source of the Farmland erosion is a continuation of pond water discharge erosion on the NAC land. The PSC Letter contradicts the aerial photos.

The following aerial photo was received from Bill Kirk, NAC.



The following photos were received from PSC Dean Moos in 2019.

(Top is North)



PSC photos dated 2011 and 2014 show the extent of the erosion (from east side of the **Farmland** next to the **NAC** land). These photos were received from Dean Moos, **PSC**, in 2019.

- These **PSC** photos show **NAC** pond water discharge erosion that resulted in loss of topsoil and loss of crops in 2011 and 2014.
 - These **PSC** photos were "**not**" included in the 2011 **PSC Inspection Report** and 2014 **PSC Inspection Report**.

31 Aug 2011 PSC Photo (Facing West)
Extensive erosion



31 Aug 2011 PSC Photo (Facing Northwest)
Extensive erosion



2014 PSC Photo (Facing West)
Extensive erosion



2014 PSC Photo (Second Gully also Facing West)
Extensive erosion



Since Jan 2017, **NAC** pond water discharge has created more gullies and more erosion as described in the 2018 **PSC Inspection Report**.

The **Landowners** had never been told (by **NAC** or the **PSC**) that **NAC** had been discharging pond water onto the **Farmland** and into the **Farmland** creek.

The erosion on the west side of the **Farmland** creek has an indirect path to the **NAC** pond water discharge flow path (see earlier photos). The west side erosion starts at the north end of the creek. This erosion is because the elevation is lower at the north end of the **Farmland**.

- When **NAC** discharged pond water faster than the water could flow into Lake Sakakawea, the creek filled with water (similar to a pond).
- When the creek water level "overflowed" the creek, the pond water flowed west "onto" the **Farmland** (on the north end of the creek).
- When the discharged pond water was blocked by snow and ice on the **Farmland**, the water was forced to flow south, eventually to the southwest corner of the **Farmland**. Over time, this resulted in gullies as is depicted on the aerial photos.

A similar example is the Missouri River, which flowed northeast into the Hudson Bay thousands of years ago.

- When glaciers blocked the Missouri River, it forced the Missouri River to flow south, as it does today.

Blocking water flow redirects the water flow. Eventually, the water follows a new path.

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*Bottom line #2: See Requested Relief #2.*  
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Reclamation Formal Citizen Complaint #3: This same 7 billion gallons of surface coal mine disturbed area pond from within the permit area water entered the farmland creek which resulted in flooding the southwest corner of the farmland which caused the loss of crop income (impact outside the permit area, without a PSC permit revision and without Landowner consent).

Controlling Provisions #3: See Controlling Provisions described in the Executive Summary.

Requested Relief #3:

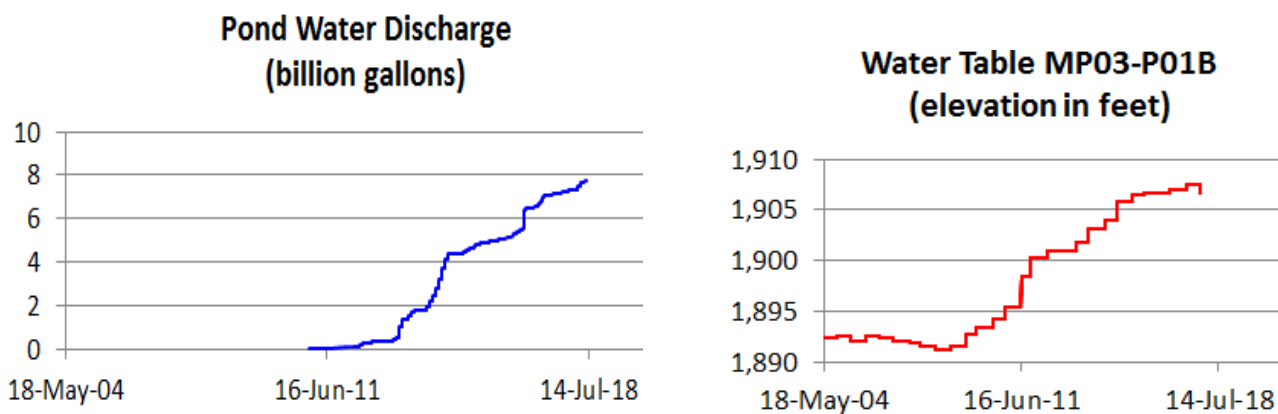
- Reduce the water elevation level to the year 2004 water elevation level, by installing drain tile on the west side to remove the water flooding the southwest corner of the **Farmland**.

Background #3:

Per the 11 Jan 2019 **Department of Health Pond Water Discharge Document**, since 1 Jan 2011, **NAC** discharged more than **7 billion gallons** (7,765,153,000 gallons) of pond water into the **Farmland** creek.

On 30 Apr 2018, 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** (see map on page 1).

- The **MP03-P01B** water table elevation increased significantly after pond water started being discharged into the creek.
- The higher water table elevation flooded the southwest corner of the **Farmland**.



The **PSC Letter** states, "*The elevation of shallow ground water tables have raised ... in recent years due to a trend of increased precipitation.*"

- The **PSC Letter** contradicts the water table elevation measurements.
 - Of the six water table elevations received from the Brian Beechie, **PSC**, only the **MP03-P01B** water table shows increases in water table elevation.
 - The other water tables did not increase water table elevations.

The **PSC Letter** states, "*The Reclamation Division concludes that the wet areas in your field are not the result of Coteau mining and reclamation activities.*"

- The **PSC Letter** contradicts the facts that **NAC** has discharged more than **7 billion gallons** (7,765,153,000 gallons) of pond water into the **Farmland** creek.
- The **Farmland** creek is currently filled with water.
- Clyde Eisenbeis and Lyle Eisenbeis (who owns adjacent farmland) have never seen "any" water in that **Farmland** creek over a span of 60 years.

On 31 Mar 2019, Lucille Sailer (who owns a farmhouse about a quarter mile northwest of the **Farmland**) called me.

- **NAC** pond water discharge causes her **farmhouse basement to flood** (see image on page 1).
- Lucille Sailer had never seen "any" water in that **Farmland** creek over a span of 60 years, until **NAC** started discharging pond water into that creek.

The description of the creek water level "overflowing" the creek (described in Reclamation Formal Citizen Complaint #2) lead to this flooding.

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*Bottom line #3: See Requested Relief #3.*  
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Reclamation Formal Citizen Complaint #4: Modified a Mercer County road ditch making it deeper in order to convey the large volume of water discharge away from the coal mine that resulted in blockage of historical direct ramp access to the farmland (such construction was done outside the permit area without a PSC permit revision, without Landowner consent, and without a Mercer County permit).

Controlling Provisions #4: See Controlling Provisions described in the Executive Summary.

Requested Relief #4:

- Install an approach across the County road ditch on the north side of the Farmland.
- Plant native prairie grass in the County road ditch on "both" sides of the road.

Background #4:

Clyde Eisenbeis moved back to North Dakota in Oct 2015. Esther Eisenbeis died in June 2016.

Wayne Eisenbeis rented the **Farmland** in 2015. He decided to not rent in 2016. Clyde Eisenbeis contacted farmers to rent the **Farmland**.

- An 11 Apr 2016 email from Dean Gerving (potential **Farmland** renter), *"I won't be able to get into the east side of the quarter. The access will not work for our drills or semis. The angle of the ditch is too sharp."*
- Jerome Boeshans expressed interest in renting the **Farmland**, if an approach were installed.

On 13 Apr 2016, Clyde Eisenbeis, Jerome Boeshans, and Jayme Boeshans (**Farmland** renters) met with Jerry Becker, **NAC**, and Bill Kirk, **NAC**, at the **Farmland**.

- The meeting was to discuss the location of an approach.
 - Bill Kirk mentioned that he had prepared engineering drawings for the approach, and wanted to have the location approved (stakes indicated the approach location and size).
 - Clyde Eisenbeis, Jerome Boeshans, and Jayme Boeshans approved the location.
 - Jerry Becker indicated they could start in a few weeks after permit approval.
 - Clyde Eisenbeis was asked to obtain the approval from the Mercer County Road Superintendent, Ken Miller.
 - On 9 May 2016, Ken Miller approved the permit.

On 29 Jul 2016, Brad Erickson, **NAC**, met with Clyde Eisenbeis.

- Brad Erickson stated the approach was held up because of rain. He stated that approach would be installed in a few weeks.
 - Clyde Eisenbeis asked how the farmers were able to plant crops if it rained too much.
 - The approach was never installed.

These **PSC** photos of the road ditch next to the **Farmland** are prior to **NAC** digging the ditch deeper.

8 Oct 2008 PSC Photo (Facing East)
Road ditch is shallow



31 Aug 2011 PSC Photo (Facing West)
Road ditch is shallow
Erosion on far end (west end) is visible
NAC deepened road ditch after 15 Nov 2011



There is no newer **PSC** Photo



On 19 Apr 2016, Clyde Eisenbeis met with Wes Gunsch, Mercer County Commissioner, at the **Farmland**.

- Wes Gunsch was surprised the ditch was dug deep without an approach. Wes Gunsch was also surprised that there was no lease agreement for the ditch on the east side of the **Farmland**. He recommended Clyde Eisenbeis contact the Mercer County Water Board and the **PSC**.

On 8 Jun 2016, Clyde Eisenbeis contacted Greg Lange, Mercer County Water Board.

- Greg Lange recommended Clyde Eisenbeis contact the **PSC**.

On 27 Oct 2016, Clyde Eisenbeis contacted Guy Welch, **PSC**, after numerous conversations with **NAC**. The response was that the **PSC** planned to look at the site next spring.

- On 13 Apr 2017, a Guy Welch email stated, "*... a **PSC** inspector looked at this site last week and indicated no changes from last fall. ... This office will raise this issue with Coteau during a meeting that is planned with mining company personnel late next week.*"
 - Clyde Eisenbeis questioned this response, as there were changes.
- On 28 Apr 2017, a Guy Welch email stated, "*The Reclamation Division discussed this issue with Coteau last Friday and were informed that 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.*"
 - Clyde Eisenbeis responded with, "*That is not true. Who told you that?*" There was no **PSC** response. This was the "first time" **NAC** requested written authorization.

On 1 May 2017, Clyde Eisenbeis emailed a written authorization to install the approach to **PSC** and **NAC**.

- This written authorization was to substantiate a verbal authorization given to Jerry Becker and Bill Kirk on 13 Apr 2016. This written authorization was ignored.

On 22 May 2017, Clyde Eisenbeis received a written authorization, written by **NAC**.

- This **NAC** written authorization contains, "*AND FURTHER, 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.*"
 - Clyde Eisenbeis did not sign the **NAC** written authorization as it contained items not relevant to installing an approach.

Clyde Eisenbeis emailed copies of the Clyde Eisenbeis written authorization to **PSC** and **NAC** multiple times.

Clyde Eisenbeis also emailed updated history docs to **PSC** and **NAC** multiple times.

- The **NAC Letter** contains, "*... we did receive your May 1, 2017, September 15, 2017 and October 10, 2017 e-mail messages. We also received your referenced "written authorization."*"
 - After numerous claims by **NAC** that Clyde Eisenbeis had never responded to written authorization requests, Christopher Friez, **NAC**, finally admitted that **NAC** had received the Clyde Eisenbeis emails with a written authorization attachment.
- The 22 Sep 2018 **NAC Approach Agreement** contains, "*AND FURTHER, 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.*"
 - Clyde Eisenbeis did not sign this agreement.

Since 2016, Jerome Boeshans and Jayme Boeshans, **Farmland** renters, have struggled to access the **Farmland** to plant and harvest crops because the ditch is too steep.

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**Bottom line #4: See Requested Relief #4.**  
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