



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

Julie Fedorchak  
Randy Christmann  
Sheri Haugen-Hoffart

600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480  
Web: [www.psc.nd.gov](http://www.psc.nd.gov)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
Phone: 701-328-2400  
ND Toll Free: 1-877-245-6685  
Fax: 701-328-2410  
TDD: 800-366-6888 or 711

sent via email and certified mail

August 10, 2022

Ms. Sarah Flath  
Environmental Manager  
The Coteau Properties Company  
Freedom Mine  
204 Couty Road 15  
Beulah, ND 58523  
[sarah.flath@nacoal.com](mailto:sarah.flath@nacoal.com)

RE: Notice of Formal Hearing, Eisenbeis Complaint, Case No. RC-22-339

Dear Ms. Flath:

Enclosed is the Notice of Formal Hearing regarding the Formal Complaint submitted on August 4, 2022 by Clyde Eisenbeis, Allen Eisenbeis, and JoAnn Crabtree. The hearing will be held September 1, 2022 in the Commission Hearing Room on the 12<sup>th</sup> floor of the State Capitol beginning at 8:30 a.m. CDT.

Please contact me if you have any questions.

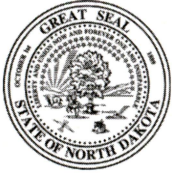
Sincerely,

Zanna A. Brinkman  
Director  
Reclamation Division

Enclosure

cc via email only: Wade Mann ([wmann@crowleyfleck.com](mailto:wmann@crowleyfleck.com))

Freedom Mine\Formal Complaints\2022\Ltrs\_hearing\_notice\_8-10-22.docx



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August 10, 2022

Mr. Clyde Eisenbeis  
2819 Hogan Dr  
Bismarck, ND 58503  
[cte677@gmail.com](mailto:cte677@gmail.com)

RE: Notice of Formal Hearing, Eisenbeis Complaint, Case No. RC-22-339

Dear Mr. Eisenbeis:

Enclosed is the Notice of Formal Hearing regarding the Eisenbeis Complaint submitted on August 4, 2022 by Clyde Eisenbeis, Allen Eisenbeis, and JoAnn Crabtree. The hearing will be held September 1, 2022 in the Commission Hearing Room on the 12th floor of the State Capitol beginning at 8:30 a.m. CDT.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Zanna A. Brinkman".

Zanna A. Brinkman  
Director  
Reclamation Division

Enclosure



# Public Service Commission

## State of North Dakota

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sent via certified mail

August 10, 2022

Mr. Allen Eisenbeis  
2979 Mesquite Dr  
Idaho Falls, ID 83404

RE: Notice of Formal Hearing, Eisenbeis Complaint, Case No. RC-22-339

Dear Mr. Eisenbeis:

Enclosed is the Notice of Formal Hearing regarding the Eisenbeis Complaint submitted on August 4, 2022 by Clyde Eisenbeis, Allen Eisenbeis, and JoAnn Crabtree. The hearing will be held September 1, 2022 in the Commission Hearing Room on the 12th floor of the State Capitol beginning at 8:30 a.m. CDT.

Please contact me if you have any questions.

Sincerely,

Zanna A. Brinkman  
Director  
Reclamation Division

Enclosure



# Public Service Commission

## State of North Dakota

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ND Toll Free: 1-877-245-6685  
Fax: 701-328-2410  
TDD: 800-366-6888 or 711

sent via certified mail

August 10, 2022

Ms. JoAnn Crabtree  
14507 SE 27th Cir  
Vancouver, WA 98683-7630

RE: Notice of Formal Hearing, Eisenbeis Complaint, Case No. RC-22-339

Dear Ms. Crabtree:

Enclosed is the Notice of Formal Hearing regarding the Eisenbeis Complaint submitted on August 4, 2022 by Clyde Eisenbeis, Allen Eisenbeis, and JoAnn Crabtree. The hearing will be held September 1, 2022 in the Commission Hearing Room on the 12th floor of the State Capitol beginning at 8:30 a.m. CDT.

Please contact me if you have any questions.

Sincerely,

Zanna A. Brinkman  
Director  
Reclamation Division

Enclosure

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Clyde Eisenbeis  
Complaint

Case No. RC-22-339

NOTICE OF FORMAL HEARING

September 1, 2022

Preliminary Statement

The Public Service Commission (Commission) received a Formal Complaint on August 3, 2022, a revised Formal Complaint on August 4, 2022, and a request for a Formal Hearing on August 5, 2022, from Clyde Eisenbeis, Allen Eisenbeis, and JoAnn Crabtree (Eisenbeis family) who own land adjacent to The Coteau Properties Company's Freedom Mine Surface Coal Mining Permit No. NACT-9501 that covers 6,525.7 acres of land located in portions of Sections 30, 31, and 32, T146N, R87W; Sections 14, 15, 16, 22, 23, 25, 26, 27, 34, 35, and 36, T146N, R88W in Mercer County. Permit No. NACT-9501 was approved by the Public Service Commission on April 3, 1996. All coal has been removed and the permit is in reclamation status.

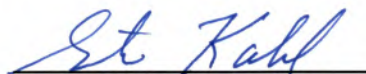
The Eisenbeis family alleges the mine installed a path for surface water to flow onto their property in the NW1/4 of Section 34, T146N, R88W; the mine restricted access to farmland by modifying the county road ditch and diversion outside the permit area without proper permits; that pond overflows and discharges caused erosion and flooding; that mine operations resulted in the loss of acreage and crop income; that surface water from ponds and discharges is seeping into the groundwater which is raising the water table and contaminating the aquifer with sulfur; and other related concerns as stated in the August 4<sup>th</sup> Formal Complaint. The complaint cites North Dakota Century Code 38-14.1-01, 38-14.1-01(1), 38-14.1-02, 38-14.1-02(17), 38-14.1-02(19), 38-14.1-02(34), 38-14.1-02(35)(a) and (b), 38-14.1-14, 38-14.1-14(1), 38-14.1-21(3)(c), 38-14.1-24, and 38-14.1-24(8); North Dakota Administrative Code 69-5.2-01, 69-05.2-01-02, and 69-05.2-01-02(1); and Policy Memorandum 6, Activities Covered by Surface Coal Mining Permits.

Notice of Formal Hearing

Notice is hereby given that the captioned matter is set for a Formal Hearing, commencing at **8:30 a.m. CST**, on **September 1, 2022**, in the Public Service Commission's Hearing Room, 12<sup>th</sup> Floor, State Capitol, Bismarck, North Dakota.

If you require any auxiliary aids, such as readers, signers, or Braille materials, please notify the Commission, at (701) 328-2400, or Relay North Dakota TTY: 1-800-366-6888 at least 24 hours prior to the hearing.

PUBLIC SERVICE COMMISSION

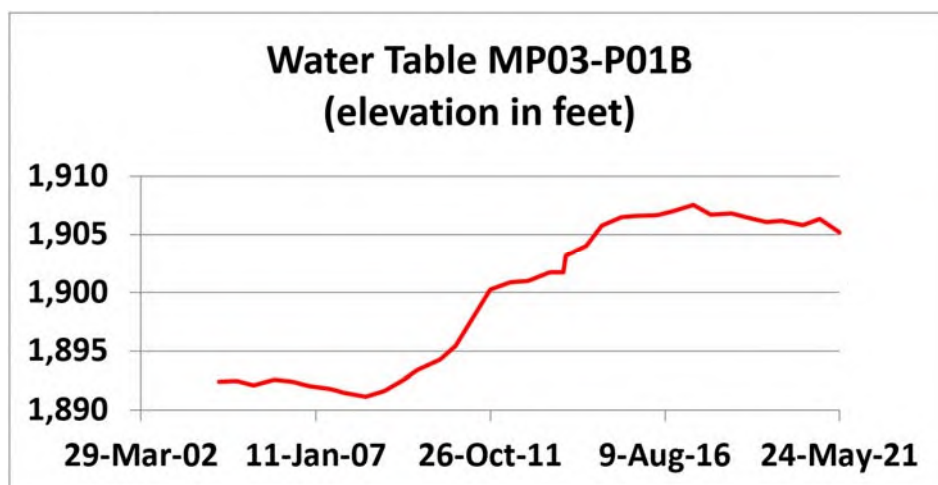
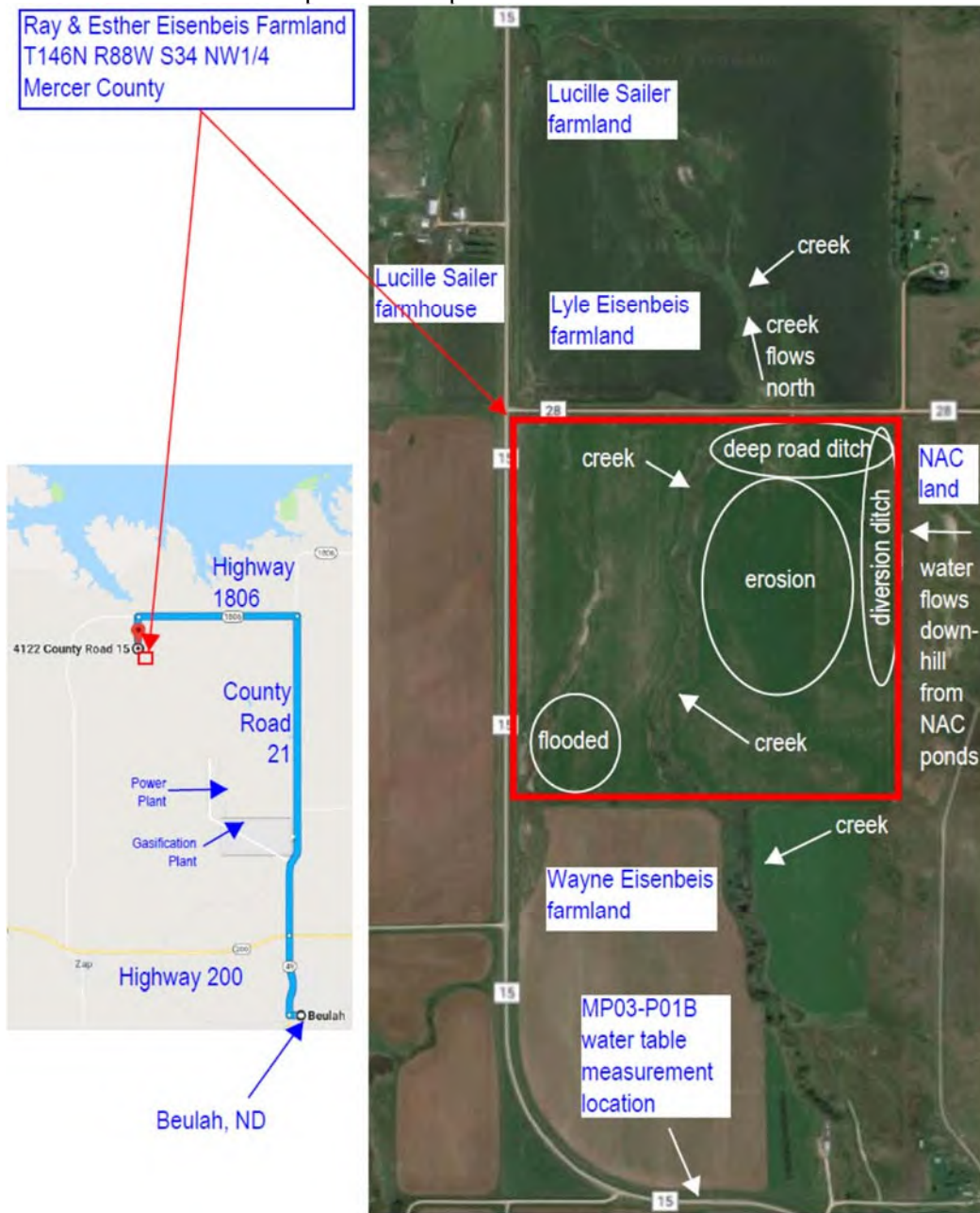


Steven Kahl  
Executive Director

7 RC-22-339 Filed 08/09/2022 Pages: 1  
Notice of Formal Hearing - to be held Sept. 1, 2022  
Public Service Commission



Top of the map is north.



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***Executive Summary Complaint:***

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.
  - 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.

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**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

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**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 ....

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**PSC Public Awareness: Laws, Rules and Other Interpretive Documents by Jurisdiction - Coal Mining**

<https://psc.nd.gov/public/laws/othercoalmining.php>

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

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## *Executive Summary Background:*

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**?

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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**?

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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.

The 19 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.
  - 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:

- the **PSC** investigating,
- the **PSC** taking photos,
- **Pond** water netting found in numerous locations on the **Farmland**,
- 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:
  - the **PSC** investigating again,
  - the **PSC** taking photos again,
  - **Pond** water netting found in numerous locations on the **Farmland** again,
  - the **Farmland** renter Wayne Eisenbeis telling **Eisenbeis** that the **Pond** overflowed again,
  - Jerry Becker, **NAC**, calling **Eisenbeis** again asking for permission to repair the gullies.

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.*"

- 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.*"
  - **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.

---

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**."

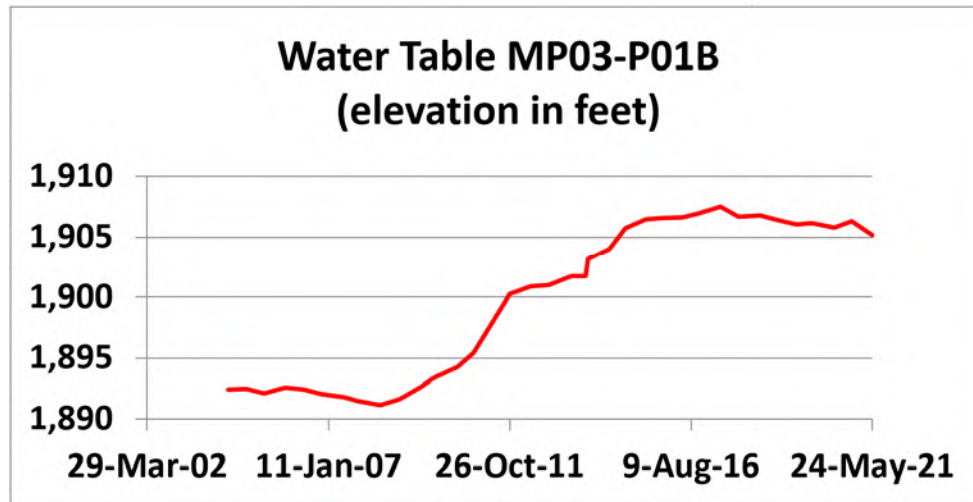
- **Eisenbeis** views this as a threat.
- **NAC** did cause extensive damage as is described in this document.
- This is like a robber telling a victim that this is a private matter. **Do not contact the police.**

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

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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.

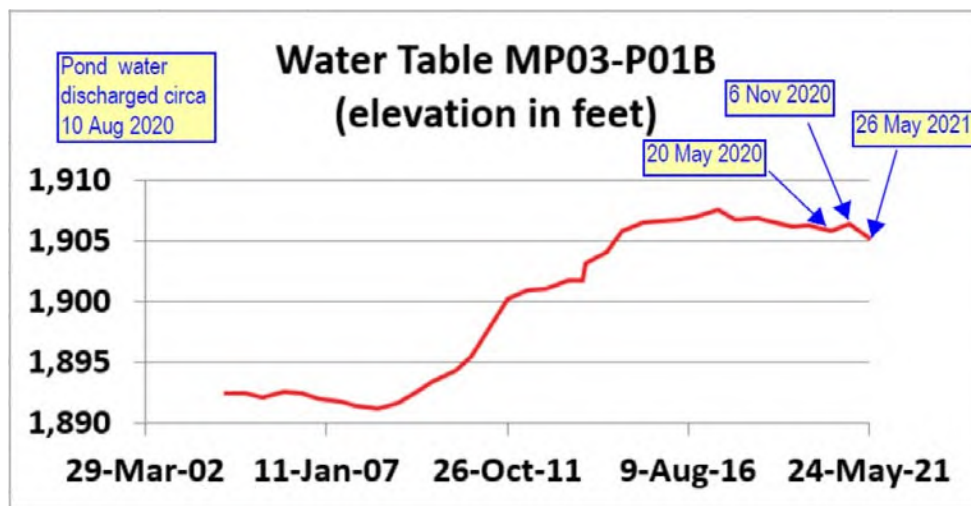
- The **PSC** Commissioners:

- 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.
- 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 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**

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Pond water overflow erosion of Farmland.



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PSC Photos dated **31 Aug 2011**

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



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PSC Photos dated **16 Sep 2014**

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Pond water overflow erosion of Farmland.



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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**.



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PSC Photos dated **26 Apr 2018**

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**Farmland** erosion - new gullies.



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



**Farmland** erosion – new gullies.



**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.



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PSC photos dated **6 Mar 2008**.

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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.



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-----  
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.



-----  
**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).
- 

Photo taken on dated **26 Jul 2022**

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



%%%%%%%%%

***Photo Summary #1:***

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.



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



PSC Photo **28 Jun 2022** ... The road ditch and diversion ditch continue to erode. There was zero erosion before NAC deepened the diversion ditch and road ditch ... see PSC Photos dated 8 Oct 2008.



***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.







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



%%%

**Bottom Line Summary:**

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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.  
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**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:** **Eisenbeis** called the Mercer County Sheriff after he saw what **NAC** had done. The Mercer County Sheriff asked when this damage had occurred, then stated that was too long ago.

Did the **PSC** contact the Mercer County Sheriff?  
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**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.  
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**Bottom line #6:** All **PSC** photos and **PSC** inspection reports should be given immediately to the land owners.  
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**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.
  - 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.

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## ***Complaint and Requested Relief:***

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**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.

~~~~~  
**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.

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**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.

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**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:

- **Eisenbeis Family,**
  - Wayne Eisenbeis,
  - Lyle Eisenbeis,
  - 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) Contacting the Mercer County Sheriff
- 11) Meeting with the ND Water Board
- 12) Writing a Formal Complaint to the **PSC** (the **PSC** renamed it to an informal complaint)
- 13) Researching NDCC, NDAC, and PSC Memorandum to find relevant laws
- 14) Contacting people to find who understands relevant ND laws
- 15) Contacting Office of Surface Mining Reclamation and Enforcement (Casper, Wyoming and Denver, Colorado)
- 16) Contacting the ND Attorney General's office
- 17) Contacting the ND Ethics Commissioners.

18) Creating a website [<https://Beulah.FoxPing.com>] regarding the actions of **NAC** over a span of more than ten years

19) 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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These are additional comments (**brown font**), after the PSC final letter (dated 13 June 2019) was sent to me.

My original comments on this letter (**blue font**) were emailed to Dean Moos on 11 Jun 2019, before the PSC Commissioner meeting. Dean Moos forwarded this letter, with my comments, to the PSC Commissioners on 11 Jun 2019.

One of the PSC Commissioners had this letter, with my comments, at the meeting. I could see the **blue font** from a distance. My comments were not mentioned during the 12 Jun 2019 PSC Commissioners Meeting.

The comments on a **brown font** are corrections to my mistakes.

I was not allowed to speak at the 12 Jun 2019 PSC Commission Meeting.

Contents of the Formal Citizen Complaint (FCC) are referenced below.

June XX, 2019

Definitions:  
,  
**NAC:** North American Coal / Coteau  
,  
**PSC:** ND Public Service Commission

- 1) 12 Jun is tomorrow.
- 2) Is tomorrow an informal review or formal review?
- 3) Why am I not allowed to verbally participate in this review?

The Formal Citizen Complaint is addressed to the Commissioners. What part is unclear?

Mr. Clyde Eisenbeis  
2819 Horgan Drive  
Bismarck, ND 58503

Dear Mr. Eisenbeis:

The North Dakota Public Service Commission (Commission) has reviewed your filing, dated May 15, 2019, regarding your land located in the NW¼ of Section 34, T146N, R88W.

Upon review of your filing, the requested manner to process this filing is unclear. However, based upon the Reclamation Division's July 23, 2018 response and the filing's citation (69-05.2-28-01 and 69-05.2-28-02), the Commission is administratively processing this as a request for informal review. On June 12, 2019, the Commission informally reviewed and discussed your filing during the administrative matters portion of its regular meeting and asked me to respond to you.

Why was I not asked to clarify?

Your property is located off-permit and adjacent to Surface Coal Mining Permit NACT-9501 at the Coteau Properties Freedom Mine. The E½ of Section 34 is part of Surface Coal Mining Permit NACT-9501. Portions of the permitted area in the E½ of Section 34 were mined and reclaimed. Sedimentation ponds P-H34-04 and P-H34-05 were also constructed in the NE¼ of Section 34 upstream of your property in 1999 and 2004, respectively. The purpose of sedimentation ponds is to detain surface runoff from mine disturbance areas until it meets the required effluent or discharge standards. During active mining operations, Coteau routed discharges from these ponds around your property through pipes to the main drainage channel in the NW¼ of Section 34. Sedimentation pond P-H34-04 was removed and reclaimed in 2013 and sedimentation pond P-H34-05 was removed and reclaimed in 2015.

Many of the points in your filing were previously addressed in the Reclamation Division's July 23, 2018 letter to you. A copy of that letter is attached (Attachment 1) and serves as part of our response; however, each of your specific complaints is addressed below. Also in response to your earlier concerns, we requested additional information from Coteau (see Attachment No. 2)

1) I am unaware of any pipe. Are there photos?

I had never been told there was a pipe for pond water discharge.

2) The FCC photos show pond discharge erosions in the field and around the field (not possible with pipe).

regarding the diversion/road ditch and erosion on your property. Coteau's response is provided in Attachment No. 3.

**Complaint No. 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.*

north  
Reclamation Division staff noted on several occasions an existing diversion located on the east side of your property in the NW¼ of Section 34 (off-permit). We are uncertain who constructed this diversion or when it was constructed; however, it was in place well before the adjacent area was permitted, mined, and reclaimed. This diversion flowed to the north until it intercepted the south road ditch of the road between the NW¼ of Section 34 and the SW¼ of Section 27.

On August 28, 2007, Coteau submitted the application for Revision No. 30 to Surface Coal Mining Permit NACT-9501. This revision proposed changes to the postmine topography and watershed boundaries in the NE¼ of Section 34. The size of watershed 14-14 (most of the area controlled by sediment pond P-H34-04) decreased slightly (5 acres smaller than premine) but the size of watershed 14-15 (most of the area controlled by sediment pond P-H34-05) was increased by 132 acres. The combined area of watersheds (14-4 and 14-15) increased by a total of 127 acres. Revision No. 30 also proposed some land use changes for the NE¼ of Section 34 including changing the postmine land use of a portion of the watersheds from cropland to native grassland. Attachment 1 includes maps depicting pre- and post-mine watersheds 14-14 and 14-15.

Due to the changes proposed by Revision No. 30 (increased watershed size and changes to the post mine topography), Coteau was asked to provide additional documentation that downstream areas would not be adversely affected by the increased watershed size of watershed 14-15. Coteau updated the Probable Hydrologic Consequences (PHC) section of the permit to address these concerns. Their analysis compared the premine watershed characteristics to those proposed in Revision 30. A standard and commonly accepted watershed flow model was used to predict runoff velocity and volumes from the revised watershed areas and these values were compared to the premine conditions using the same models. Attachment 1 includes the results of that modeling (Table 3 of Section 2.2.5 of Permit NACT-9501).

The model predicted the peak discharge rate (velocity measured in cubic feet per second or cfs) and total runoff volume measured in acre-feet (ac-ft). Three different rainfall events were modeled: a 2-year, 24 hour rainfall event (1.93"), a 10-year, 24 hour rainfall event (3.12"), and a 25-year, 24 hour rainfall event (3.63"). Peak discharge and total runoff volumes were calculated at the control point (the point where the sedimentation ponds would have discharged) for each watershed and then for the combined flow of both watersheds. The combined total discharge rate and flow volume is simply the sum of the two watersheds. While the calculated peak

If it rained 100,000 gallons of water, the rain water would soak into the ground. If a 100,000 gallon tank were discharged through one valve in the tank (over the same time span), it would result in erosion.

discharge and total runoff volume of watershed 14-15 increased over premine conditions, the peak discharge and total runoff volume of watershed 14-14 decreased, and the sum total peak discharge and total runoff volume for both watersheds (or that which would flow in the diversion) actually decreased.

As part of our review of Revision No. 30, Reclamation Division staff have reviewed the flow modeling provided by Coteau and have determined the parameters and assumptions used were appropriate and reflected the actual conditions. In response to your concerns, staff again modeled both watersheds and the results of our independent modeling are similar to those provided by Coteau in Revision 30. The results of our modeling are also included in Attachment 1.

Photos are more accurate than models.

Water table elevation measurements are more accurate than models.

Our analysis shows that even though the total combined watershed size increased after reclamation, the expected total flow rates and volumes are less than the premine condition. This is due to a number of reasons but is primarily due to the reclaimed or postmine watersheds being less steep than the premine watersheds. The premine average slope of watershed 14-15 was 12.7% and the postmine average slope is 4.4%. In addition, the soils with a higher runoff potential (shallow and claypan soils) that were common in the premine watershed were replaced with deeper, loamy soils with higher infiltration rates and lower runoff potential. In addition, there is less cropland and more native grassland in the reclaimed watershed than in the premine watershed. The perennial native grassland vegetation generally has a lower runoff potential than cropland.

North Dakota Century Code 38-14.1-24(8) requires that mining companies “minimize disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation.” As part of Revision No. 30, the Reclamation Division determined that although the combined watershed size increased following mining and reclamation, the combined peak discharges and total runoff volume decreased or was near premine conditions. Therefore, there would be no adverse effects to the downstream areas as a result of the changes proposed in Revision No. 30. Revision No. 30 was approved on January 9, 2009.

As previously stated, the original diversion was constructed many years prior to mining and reclamation. At the time that Revision No. 30 to Permit NACT-9501 was approved, Coteau demonstrated that the changes proposed by Revision No. 30 would not have adverse effects on downstream areas and the Reclamation Division concurred. The condition or the functionality of the existing diversion on your property was not evaluated at that time since the Reclamation Division found that the actions proposed by Revision 30 would not result in adverse effects to downstream areas, i.e., the calculated combined flows of reclaimed watersheds 14-14 and 14-15

NAC deepened the original diversion ditch. PSC Memorandum 6 to Mine Operators, March 8, 1995: "Listed below are specific activities and types of disturbances which are included under the scope of 'Surface Coal Mining Operations,' as defined in NDCC Section 38-14.1-02(33). These activities and disturbances must be conducted within the boundaries of a surface coal mining permit."

NDCC Chapter 38-14.1-01 (1) ... disturbances of surface areas ... by damaging the property of citizens --- NDCC 38-14.1-02 (35 b) includes adjacent land.

Mr. Clyde Eisenbeis  
June 12, 2019  
Page 4 of 7

NAC modified the diversion ditch. NAC is not allowed to disturb land outside the permit area.  
1) NDCC 38-14.1-02 (35 b) includes adjacent land.  
2) NDCC 38-14.1-24 (8 g) requires avoiding natural channel deepening.

are less than the premine condition. Our re-analysis of this finding in response to your concerns reaffirms our original finding made in 2009 when Revision No. 30 was approved.

The Reclamation Division was not involved in the reconstruction of this diversion and continues to view this issue as a matter between Coteau and the landowner. We do not view reconstruction of the diversion as a mining related matter and therefore, it is not subject to our jurisdiction nor was it an activity that required to be permitted.

NAC deepened the diversion ditch because the mining pond water overflowed onto the Esther Eisenbeis farmland. The mining pond is mining related. Pond netting was found in numerous places on the farmland.

**Complaint No. 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 without a PSC permit revision and Landowner consent.

I was told by the ND Dept of Health this was from the ponds P-H34-04 and PS-H34-05. What are the correct numbers and dates?

This is my mistake, based on my misunderstanding of information from the ND Water Board.

The PSC never informed me of any mistakes I had made in the Complaint

It appears that the pond discharges listed on Appendix F of your complaint are all of the pond discharges from the Freedom Mine for the time period of January 1, 2011 through June 25, 2018. Currently there are 68 active discharge points (sediment ponds) at the Freedom Mine and only a small portion of the discharge points drain to your property. A total of eight discharge points, discharge points no. 38 (Sump S-I02-01), 47 (Pond P-I02-02), 50 (Pond P-I03-01), 59 (Pond P-H34-01), 61 (Pond P-34-04), 85 (Pond P-H34-05), 148 (Pond P-W11-01), and 155 (Pond P-W03-04), are the only discharge points/ponds that could have discharged to your property, all of the other discharge points/ponds discharged to other watersheds. Of the 8 discharge points/ponds, all have been reclaimed with the exception of Ponds P-W11-01 and P-W03-04. As previously stated, pond discharges from sedimentation ponds P-H34-04 and P-H34-05 were routed around your property via a pipe discharge during mining and reclamation. Only when these ponds overflowed, did they flow through the old field-engineered diversion and/or across your property.

This is incorrect. When the farmland creek is filled, water flows north and south. The land elevation is almost level.

It should be noted any pit water (i.e., groundwater) encountered in the west mine area the Freedom Mine is pumped to the legal drain/Antelope Creek which flows to the south, away from your property. It should also be noted that sedimentation ponds only detain surface runoff that would otherwise have flowed down the natural drainages had the ponds not been in place. Generally, the water in the sedimentation ponds is eventually discharged when it meets the required North Dakota Department of Environmental Quality discharge standards. So the effect of the sedimentation ponds on hydrologic balance is to delay the timing of the flow event to the downstream drainage. Sedimentation ponds do not necessarily increase the volume of water that flows through a drainage system, it only affects the timing of the flow event.

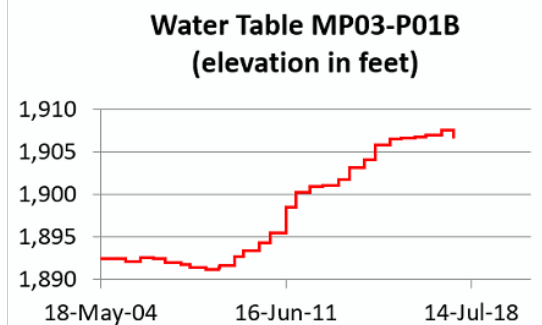
For proof, look at the increase in water table elevation increases a half mile south of the farmland (the opposite direction of Lake Sakakawea) beginning in 2011.

There is evidence that there has been a long-term erosion problem in the NW¼ of Section 34. Historical aerial photographs provide evidence of erosion prior to mining and reclamation. Google Earth contains aerial photos dating back to 1995, prior to any mining having taken place in the watersheds above your property. The 1995 aerial photo shows the same erosion and

Coal mining pond water is coal mining related.

Coal mining pond water discharge into the farmland creek spans two miles of flooding from from Wayne Eisenbeis farmland (south of the Esther Eisenbeis farmland) to Lucille Sailer farmland (north of the Esther Eisenbeis farmland). Over a span of more than 100 years, this had never happened before.

This happened because NAC discharged water from coal mining ponds into the farmland creek.



Mr. Clyde Eisenbeis  
June 12, 2019  
Page 5 of 7

While LIDAR may not have "absolute accuracy" (not exact elevation) it does have "relative accuracy" (does have accurate elevation changes). On FCC page 10, the red lines may not be exactly at an elevation of 1890, 1900, and 1910, but the changes in elevation are accurate.

The NAC image, dated 1977, is almost identical to FCC Page 9, If the NAC photo were taken in 1977, the image would show solid prairie grass on the NAC land, not NAC changes to the land.

drainage patterns as pointed out on Page 9 of 17 of the PSC and OSMRE Complaint: Eisenbeis Farmland. In addition, Attachment No. 4 includes aerial photos from 1977 and 1996 that show similar erosion and drainage patterns. We believe the field-engineered diversion was constructed as an attempt to minimize runoff and reduce erosion well before the adjacent area was permitted, mined, and reclaimed. As previously pointed out, runoff from the upstream areas was routed around your property during mining and reclamation activities via pipe discharges to natural drainage at the north end of property. Runoff from upstream areas continues to be routed around property via the reconstructed diversion.

On page 10 of 17 of the complaint, you provide a map showing elevations of your property in 1970 and 2015. You allege that the differences between the two surveys is due to erosion on your property. Although there are some slight differences in elevation, we believe this is most likely due to differences in technology. Please note that the 1970 contours (red color) are on a ten-foot elevation contour, i.e., there is ten feet of elevation difference between elevation contours. The 2015 contours are on a 2-foot elevation contour and were most likely derived from LIDAR, a much more sophisticated and accurate method of producing surface contour maps. The index contours (elevations 1890, 1900, 1910, and 1920) for the two surveys actually align very well. We believe that the slight differences between the two surveys is the result of different survey methodologies and accuracies and not the result of erosion.

The only time when there would have been flows across your property from the upstream areas east of your property during mining and reclamation is when the ponds overflowed due to a significant runoff event in excess of the design standards. The ponds were designed to contain a 10-year/24-hour storm event. Pond overflows are acceptable provided that water levels of the ponds are maintained at a level below which an adequate amount of water storage is provided to contain a 10-year/24-hour storm event.

We are aware that the rebuilt diversion overflowed twice, both times in 2014. One overflow event took place on the south end of the reconstructed diversion and was likely due to snow blocking the diversion channel making it non-functional during a snowmelt event. The other overflow event took place in August 2014 following a significant rainfall event in excess of the design standard that caused sediment pond P-H34-05 to overflow. The watershed 14-15 outlet into the reconstructed diversion washed out causing the diversion to overtop. The pond overflow was not considered a violation since adequate storage was provided in sediment pond P-34-05 to contain a 10-year/24-hour event. We are aware that the erosion associated with these events was repaired by Coteau.

Any erosion that has taken place while the diversion has been functioning as intended (i.e., taking runoff water from upstream areas around the east side of your property), is not likely to have been caused by runoff from the upstream watersheds. Simply put, the diversion prevents runoff from the areas above the diversion from flowing across your property. Therefore, the

1) This contradicts the PSC photos and reports. The diversion overflowed in 2011, 2014, and 2017. See FCC photos on pages 8 and 9 and in the PSC inspection Report dated 26 Apr 2018 (Appendix C at Beulah.FoxPing.com).

The PSC took photos in 2011 and 2014. If there was no pond water overflow why did the PSC take photos of the Esther Eisenbeis farmland? Where are the photos of NAC land? The PSC took photos of the adjacent, but not of NAC land?

I had never been told there was a pipe for pond water discharge.

There were many clumps of pond water netting at many locations on the farmland. Mining pond water did flow onto the farmland.

Mr. Clyde Eisenbeis  
June 12, 2019  
Page 6 of 7

- 1) I am unaware of any pipe. Are there photos?
- 2) The FCC photos show pond discharge erosions in the field and around the field (not possible with pipe).

There is an erosion path directly to the ponds FCC pages 8 and 9.

erosion observed on the cropland portion of your property is not caused by runoff from the upstream portions of the watershed as the runoff from the upstream areas (Coteau property) is intercepted by the diversion and does not flow across the cropland portion of your property.

The Reclamation Division has determined that Coteau conducted mining and reclamation activities in the watersheds above your property in the NW¼ of Section 34 in accordance with our surface coal mining laws and regulations. The Commission cannot require Coteau to repair erosion that is not the result of mining and reclamation activities.

**Complaint No. 3:** This some 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).

As stated in our response to Complaint No. 2, only a small fraction of the discharges from the Freedom Mine listed in Appendix F actually flowed through your property. Water discharged from ponds P-H34-04 and P-H34-05 while they were in place would not have affected the drainage channel through your property as these ponds were discharged via pipe around your property and entered the natural drainage at the very north edge of your property and continued to flow to the north through the natural drainage to Lake Sakakawea. Currently, only discharges from ponds P-W11-01 and P-W03-04 would flow through your property and those discharges flow through the natural drainage that runs through the center portion of your property.

To date, there have been no mine pond discharges to the western-most drainage channel (the cattail area is located in or near this drainage channel) through your property. Flows in the western-most drainage channel are from an entirely undisturbed watershed located south and west of your property. A significant portion of this watershed is not even within the permit area.

**Complaint No. 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)

Similar to the construction of the diversion, we view the deepening of the road ditch and property access as a matter between Coteau and the landowner. We do not view it as a mining related matter and as such is not jurisdictional to the Commission.

Although mining and reclamation activities modified the watersheds upstream of your property, we believe the demonstration has been made that Coteau has minimized disturbances to the prevailing hydrologic balance at the mine site and associated offsite areas as required by North Dakota Century Code 38-14.1-24(8). Any erosion on your property that was the result of mining

NAC modified the diversion ditch. NAC is not allowed to disturb land outside the permit area.

- 1) NDCC 38-14.1-02 (35 b) includes adjacent land.
- 2) NDCC 38-14.1-24 (8 g) requires avoiding natural channel deepening.

The PSC took photos of the farmland erosion on 31.Aug.2011 and on 16.Sep.2014. This is mining related.

This is my mistake, based on misunderstanding of info from the ND Water Board.

NAC pond water discharge filled the farmland creek. This water seeped into the ground and raised the water table located 0.5 miles south of the farmland (the creek flowed north). That water table elevation increased to the same elevation as the farmland, which flooded the southwest corner of the farmland. The pond water discharge also flooded Lucille Sailer's farmhouse basement (less than 0.25 miles from the creek).

The creek was dry most of the time for more than 100 years. There was no flooding of farmland, and there were no cattails. After the pond water discharge started, the creek was filled with water all the time, farmland was flooded, and cattails appeared.

NDCC Chapter 38-14.1-01 (1) ... disturbances of surface areas ... by damaging the property of citizens --- NDCC 38-14.1-02 (35 b) includes adjacent land --- NDCC 38-14.1-24 (8 g) requires avoiding natural channel deepening.

NAC deepened the original diversion ditch. Per PSC Policy Memorandum 6: Activities covered by coal mining => ... specific activities and types of disturbances ... as defined in NDCC 38-14.1-02(33) ... disturbances must be conducted within the boundaries of a surface coal mining permit.

Mr. Clyde Eisenbeis  
June 12, 2019  
Page 7 of 7

or reclamation activities (overtopping of the diversion) has been repaired. Staff continues to monitor this area during routine mine inspections. At this time, we do not believe that a joint inspection is necessary.

This informal review does not affect an opportunity to request a formal review under North Dakota Century Code section 38-14.1-30, or to a citizen suit under North Dakota Century Code section 38-14.1-40. If the intent was to file a formal complaint subject to an adjudicative process, please see the attached document, "Filing A Formal Complaint" (Attachment No. 4).

Please feel free to contact our office if you have any questions.

1) I am not a permittee.

Sincerely,

2) If allowed, I request a formal review.

Can NAC provide any written authorization docs?

Dean K. Moos  
Director, Reclamation Division

Attachments: 1) July 23, 2018 Letter to Mr. Eisenbeis w/ Attachments  
2) May 14, 2018 Letter from the Reclamation Division to Coteau  
3) June 19, 2018 Response Letter from Coteau to the Reclamation Division  
4) Document "Filing a Formal Complaint"

cc: Jeff Fleischman  
David Berry  
Sarah Flath

One day has not been enough time for me to thoroughly review the docs you attached (received your docs yesterday evening). However, the two relevant docs have my initial review comments. Please forward this to the Commissioners before tomorrow's meeting.

The 7 billion gallons of water comes from the ND Dept of Health. If this is incorrect, everything else in the Formal Citizen Complaint is correct.

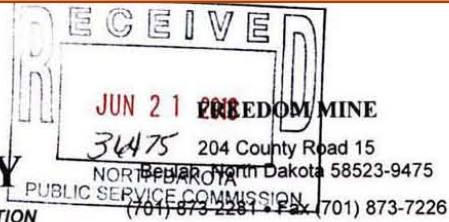
The bottom line is that NAC did disturb the land adjacent to the permit area land being mined. See <https://Beulah.FoxPing.com/> for details, including links to relevant ND laws.

Definitions:

NAC: North American Coal / Coteau  
PSC: ND Public Service Commission  
Eisenbeis: Clyde Eisenbeis

This 19 Jun 2018 NAC letter was an attachment to the 10 Jun 2019 PSC letter responding to my Formal Citizen Complaint. Eisenbeis had not seen the NAC letter before. This letter has errors and is dishonest.

**THE COTEAU  
PROPERTIES COMPANY**  
A SUBSIDIARY OF THE NORTH AMERICAN COAL CORPORATION



June 19, 2018

Mr. Dean K. Moos  
Director Reclamation Division  
Public Service Commission  
600 East Boulevard Avenue  
Department 408  
Bismarck, ND 58505-0480

Dear Mr. Moos:

This letter is in response to your letter dated May 14, 2018. Provided are responses to each of the following questions or requests.

- 1. *What was the condition of the pre-existing north/south diversion between the NE¼ and NW¼ of Section 34 and the pre-existing road ditch on the south side of the road between the NE¼NW¼ of Section 34 and the SE¼SW¼ of Section 27 prior to reconstruction? Were these features in functional condition and capable of handling the flows from the premine watershed?*

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. There was little to no elevation difference between the field and diversion bottom and between the field, ditch bottom, and the road top. The ditch had filled in with sediment over the years and when water did flow in this area, it mostly flattened out over a broad area and flooded into the adjoining field.

The diversion was not capable of handling pre-mining flows. This is evident by the erosion shown in Figures 1 and 2, attached. Figures 1 and 2 are aerial photographs of the field from 1977 and 1996 respectively.

- 2. *Was the original diversion capable of handling the flows from the upstream areas during and following mining and reclamation activities?*

No. As indicated above, the diversion was not capable of handling pre-mining flows and it was not capable of handling flows during mining and reclamation activities even though runoff was controlled during mining and reclamation activities. From 1999 to 2015, a large portion of runoff from the watershed above the diversion was captured by sedimentation ponds P-H34-04 and P-H34-05. While in place, these ponds were discharged around the downstream cropland through HDPE poly pipe into the main channel flowing through the center of the NW¼ of Section 34. This was done to avoid exacerbating the erosion that was already occurring regularly on the east side of the crop field prior to and during mining

It's important to note that NAC is not allowed to move dirt on their own land without a permit. Likewise, NAC is not allowed to move dirt on someone else's land without a permit.

The ditches were not filled with sediment, verified by the PSC photos dated 8 Oct 2008.

The road ditch has always been relatively flat, close to the elevation of the Farmland. A farm truck could always drive over it. That is why no approach was needed.

The diversion ditch was not in poor condition. It was not filled with sediment. This can be verified by the PSC photo dated 8 Oct 2008.

There is no adjoining field. The Farmland is next to a road.



activities. Therefore, it can clearly be concluded that if erosion was occurring when runoff was captured, the existing diversion would not have had the capacity to handle the flows when the ponds were removed.

It should be noted that flows during mining and following mining are less than the flows which occurred pre-mining. It should also be noted that erosion and flooding occurred in the subject field long before mining, as can be shown by viewing aerial photos, including Figures 1 and 2, dating back several decades prior to Coteau entering the area.

3. *Is there evidence that the original diversion overtopped during mining and reclamation (i.e., prior to being reconstructed)?*

The producer approached Coteau in both 2010 and 2011 about aiding in repairing erosion in the field while the sediment ponds were in place and functioning. Additionally, Figure 3 is the original ground topography survey prior to reconstruction of the diversion. As can be seen in the drawing, there are several areas that show erosion west or below the diversion. Figure 3 includes two cross-sections of the existing diversion, one at the entrance of watershed 14-14 and one at the entrance of watershed 14-15. Both cross-sections indicate that runoff would flow across the diversion to the west uninterrupted. This survey was collected on November 29, 2011, after installation of the sedimentation ponds, but prior to the reconstruction of the diversion or removal of any sedimentation ponds.

Mining operations did not cause increased flows and erosion was already occurring prior to any mining operations in the area. As noted above, flows were less during and following mining than the flows pre-mining.

4. *Please explain why the diversion and road ditch were reconstructed.*

As noted in a December 6, 2012, PSC inspection report the diversion was redesigned and reconstructed at the landowner's request. The diversion was reconstructed for several reasons. Coteau was approached by the producer, Wayne Eisenbeis, in 2010 about erosion which was occurring in the field. This erosion was occurring even with the sedimentation ponds in place and their discharges being routed around the field through HDPE pipe. Wayne Eisenbeis asked if Coteau could help him fill in the erosion using the washed material near the main drain. Soil in this area had accumulated to the extent that he was getting stuck when farming. Coteau hired an outside contractor to repair the erosion in the field. In the following year, 2011, additional erosion occurred in the field and Wayne Eisenbeis again approached Coteau about repair, and also asked that the diversion be improved to prevent future erosion. The owner at the time, Esther Eisenbeis, agreed with Wayne Eisenbeis's request. Wayne Eisenbeis is the nephew of Esther Eisenbeis. Even though he was not the current surface owner at the time, Clyde Eisenbeis, Esther Eisenbeis's son, became involved in the design and location of the proposed improved diversion. After several discussions with Bill Kirk from Coteau, and additional discussions with the PSC, Clyde Eisenbeis agreed the diversion should be reconstructed in its current location, as did Esther Eisenbeis. Over the years, washing from the existing diversion had filled the road ditch with sediment. The sediment needed to be removed in order for the diversion to function properly and not flood the north edge of the field.

Pond water overflow is not mentioned.

NAC repairing the Farmland erosion, proves NAC knew this was related to coal mining activity.

Eisenbeis was not involved with the design and current location. Eisenbeis lived in Iowa.

Esther Eisenbeis had Alzheimer's. She was incapable of making decisions.

Eisenbeis did not agree to the current diversion ditch location. Eisenbeis did request that the diversion ditch be placed east of the Farmland on NAC property.

The road ditch was not filled with sediment, verified by the PSC photos dated 8 Oct 2008.

Flooding the SW corner of the Farmland is not mentioned.

In the interest of being a good neighbor, Coteau engaged contractors to improve the pre-existing diversion with the hope it would alleviate the erosion issues that had plagued this tract for several decades.

5. *Permit NACT-9501 includes design information for the two permanent grassed waterways that were constructed below sedimentation ponds P-H34-04 and P-H34-05 in the W½NE¼ of Section 34. Was the rebuilt diversion and road ditch designed and reconstructed to handle the combined flows from these two grassed waterways?*

Yes, the diversion was sized to divert runoff from the reclaimed watersheds as well as the undisturbed area for a 10 year 24 hour storm event or 3.12 inches of rain in 24 hours. As noted above, flows from these new grassed waterways are less than flows prior to any mining activities.

6. *Are the assumptions and conditions used in the Probable Hydrologic Consequences still valid and applicable? If not, what changes have occurred?*

Yes, the PHC is still valid; however, it is conservative. For instance, Watershed 14-15 contains a stockpond, which was not considered when modeling. The stockpond would further reduce the amount of water as it will capture a portion of the runoff before overflowing. Additionally this causes the water to slow before entering the last reach of the channel. A second stockpond with a storage capacity of 5.5 acre-feet is planned for construction in the near future in the NE¼ of Section 34. This will further reduce flows as more water is captured.

Secondly, native grassland in the post mining condition is considered as "fair" for modeling purposes. A visual inspection of the area will show that the vegetation is in much better condition than "fair." This will further reduce the Curve Number and the amount of runoff leaving the site, as more water will infiltrate the ground due to residue and plant uptake.

Third, the cropland in the NE¼ of Section 34, which was located directly below the sedimentation ponds along the west side of this quarter, has now been converted to native grasslands, reducing the amount of runoff entering the diversion.

Fourth, the cropland has been assumed to be 20% fallow and 80% crop. However, farming practices have changed and the use of fallow has been virtually eliminated in the area, thus reducing the amount of runoff from the ground.

Finally, the Antecedent Moisture Condition II (AMC-II) was used in the modeling process. The use of AMC-II is conservative for this area according to a study conducted by Schroeder, Enz, and Larsen, which reports that AMC-I conditions, exist 95.1% of the time between April 1 and October 31 in the Beulah area.

In conclusion, the PHC could be remodeled to reflect the items above, and doing so would show a reduction in the flows and volumes from what is currently shown.

7. *How many times has the rebuilt diversion overtopped since being rebuilt and under what circumstances did it overtop?*

Mr. Dean K. Moos  
June 19, 2018  
Page 4 of 4

The Eisenbeis family did not authorize:

- Discharging pond water into the farmland creek which flooded the SW corner.
- Pond water overflow onto the land.
- Deepening the existing diversion ditch.
- Blocking access to the farmland by digging a deep road ditch.

To our knowledge, the diversion has overflowed twice, both times in 2014. The first overflow occurred in the spring of the year, near the south end of the diversion. This overflow was most likely caused by snow blocking the diversion and not allowing water to flow through.

The second overflow occurred later that year most likely due to a three-day rainfall event that began August 22, 2014. The rain gauge located in Section 22, T146N, R88W, approximately 1 mile north of the diversion, recorded 3.67 inches of rainfall from this three-day event. The majority of the rainfall occurred on August 23 with 3.19 inches falling in 14 hours. The intensity of the storm would equate to a 200 year/ 24 hour storm event.

These overtoppings were not caused by any mining or reclamation operations.

This ditch/diversion issue is a private matter between Coteau and the Eisenbeis family. As demonstrated, mining operations were never the source or cause of erosion in Eisenbeis fields. Past and current owners have chosen to crop the entire field in the W½ of Section 34 despite being in an obvious downstream location below higher elevation watersheds to the east. These upland watersheds existed pre-mining and remain post-mining. Pursuant to established water law in North Dakota, downstream owners must accept flows which come from higher adjacent uplands. If a landowner chooses to crop through obvious waterways, he does so at his own risk.

Coteau has tried to work with Clyde Eisenbeis, including by making an offer to alleviate his concerns at no expense to him, and he did not accept that offer. Coteau is always open and willing to work with landowners.

If you have any questions, please contact this office.

Sincerely,



Sarah J. Flath  
Environmental Manager  
The Coteau Properties Company

cc: Chris Friesz

This contradicts NDCC, NDAC, and PSC Memorandum.

Pond water overflow is not mentioned.

Not true. **NAC** did not request a written authorization initially. After delaying, more than a year, the installation of an approach, **NAC** decided they need a written authorization.

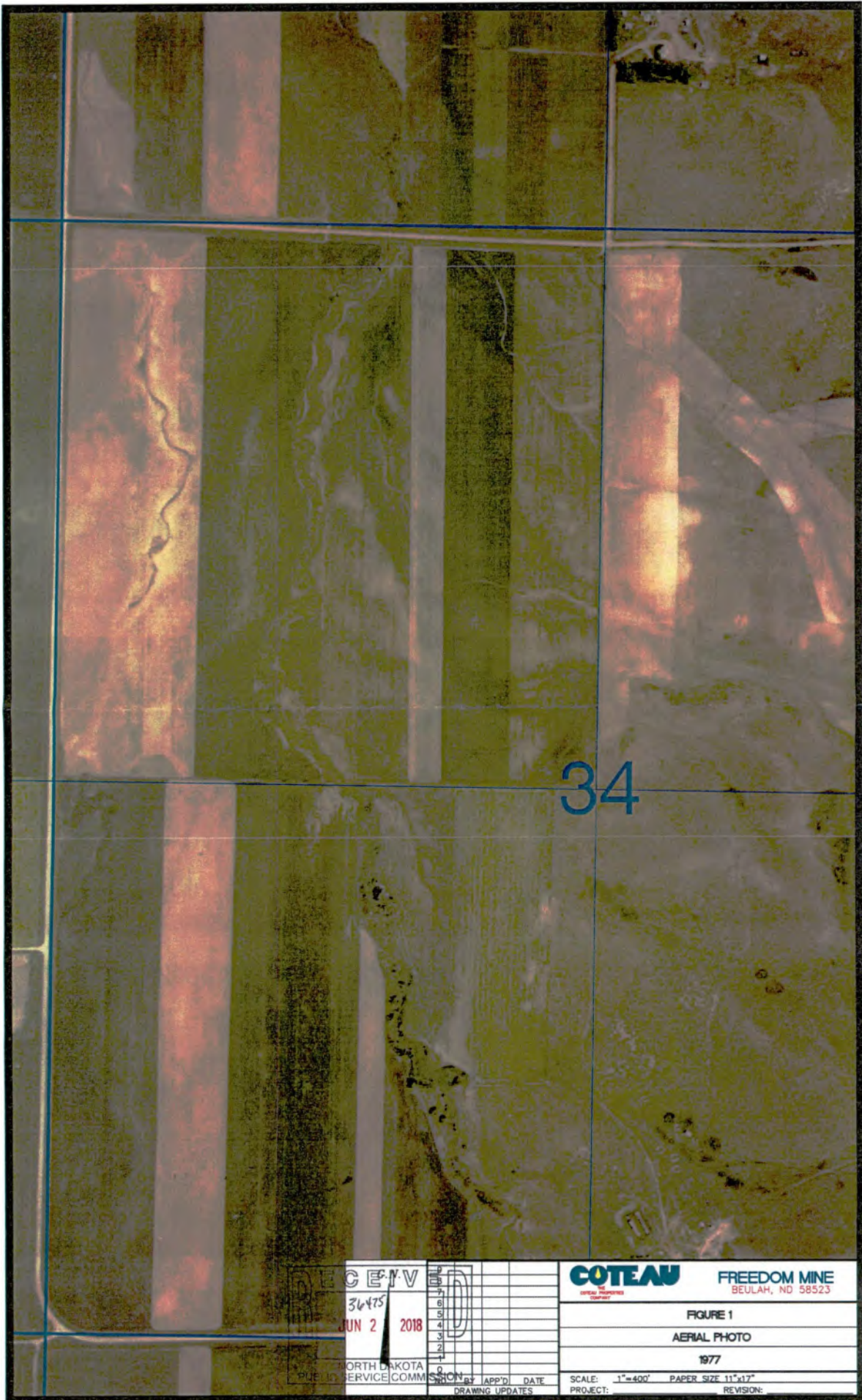
After the request, **Eisenbeis** did provide a written authorization immediately allowing **NAC** to install an approach.

Initially, **NAC** ignored the **Eisenbeis** written authorization. Later **NAC** acknowledged they received the written authorization.

Why did **NAC** not require a written authorization to dig on the farmland in 2011?

This letter contradicts the **PSC** statement that the Farmland damage is not mining related. If it is not mining related, why did **NAC** offer to fix the problems?

The **PSC** never sent this letter to **Eisenbeis** to substantiate the contents, "until" the **PSC** meeting to discuss the Eisenbeis family complaint.



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**COTEAU**  
OFFICIAL ENGINEERING  
COMPANY

**FREEDOM MINE**  
BEULAH, ND 58523

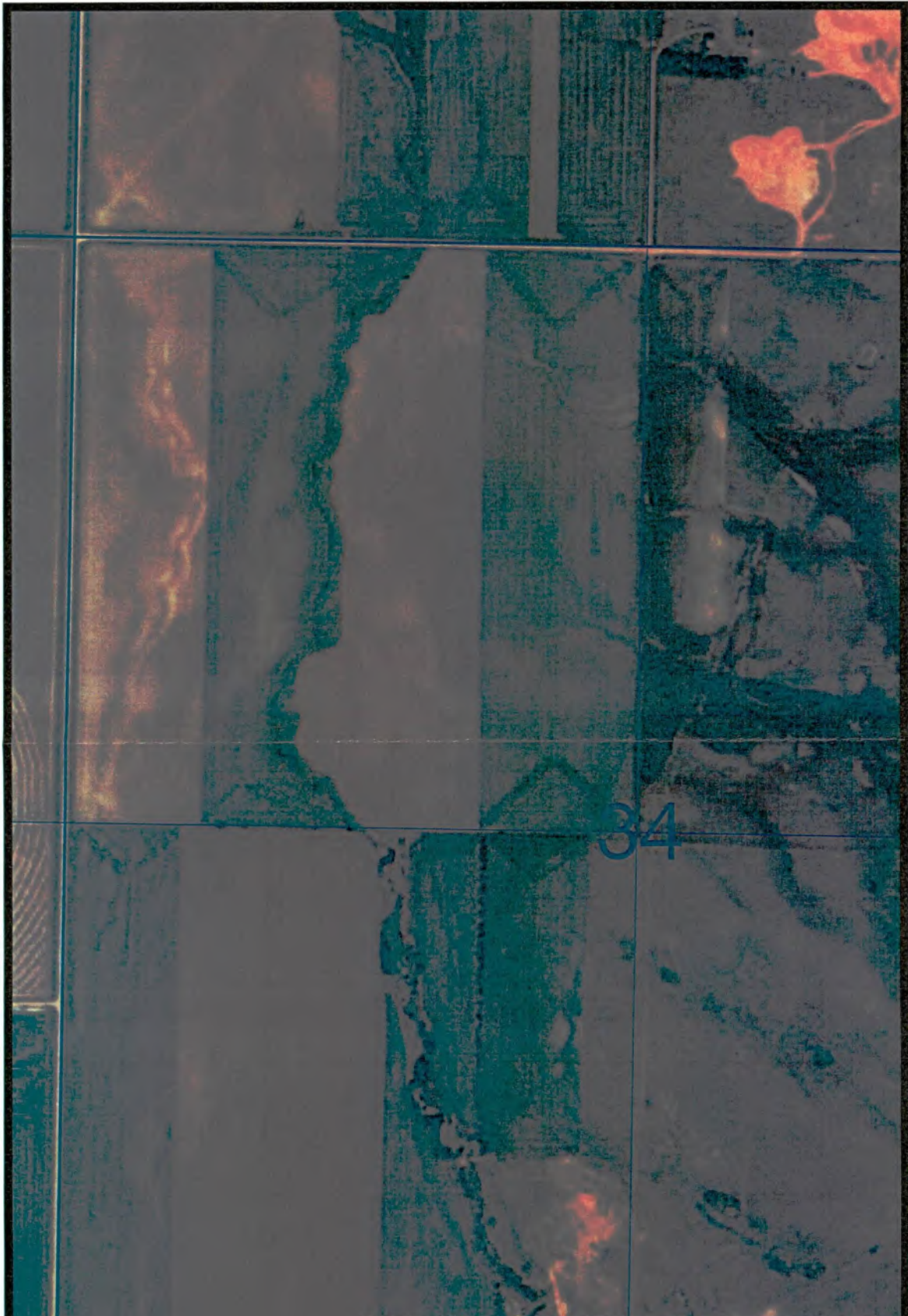
FIGURE 1

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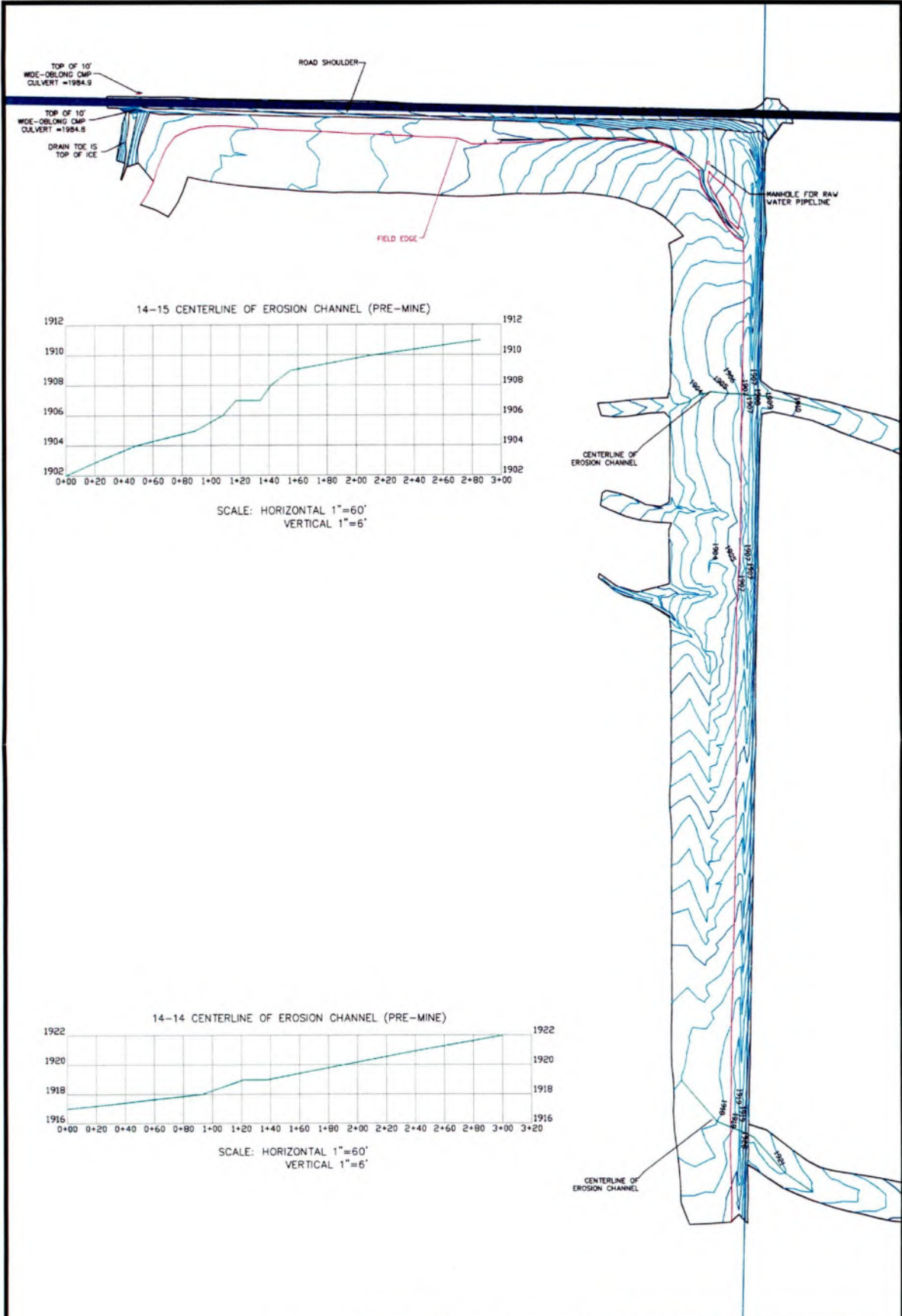
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**COTEAU** FREEDOM MINE  
 BEULAH, ND 58523

FIGURE 3

ORIGINAL SURVEY EISENBEIS DIVERSION

NOVEMBER 29 2011

SCALE: 1"=150' PAPER SIZE 11"x17"

PROJECT: REVISION:

# THE COTEAU PROPERTIES COMPANY

A SUBSIDIARY OF THE NORTH AMERICAN COAL CORPORATION

LAND OFFICE

2000 Schafer Street, Suite D  
Bismarck, ND 58501-1204

(701) 258-2200 • Fax (701) 222-7594  
Toll-Free 1-877-258-3300

September 22, 2017

See page 3. This doc was not signed.

Clyde Eisenbeis  
2819 Hogan Drive  
Bismarck, North Dakota 58503

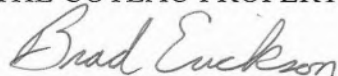
RE: Township 146 North, Range 88 West  
Section 34: NW4  
Mercer County, North Dakota

Dear Clyde,

The Coteau Properties Company ("Coteau") is in receipt of your email dated September 15, 2017 to the Public Service Commission. Coteau is still willing to work with you on this matter and would like to make a final attempt to come to a resolution. We sent you an Agreement regarding an approach on May 19, 2017 and received no response. In your September 15 email you state that the Agreement includes items that are not relevant to the approach. Coteau has determined that it no longer needs a drainage easement across your property and is willing to remove all language regarding discussing a drainage easement from the Agreement. Enclosed is a revised draft of the Agreement with all references to discussion of a drainage easement removed. Coteau is willing to construct and install an approach in exchange for a fully executed original of the enclosed Agreement. This offer is only valid until October 23, 2017. Therefore, if this Agreement is fully executed and returned to Coteau on or before October 23, 2017, the approach will be installed as soon as conditions allow. However, if this Agreement is not executed and returned to Coteau on or before October 23, 2017, this final offer expires as of that date and Coteau will no longer consider installing the approach.

Sincerely,

THE COTEAU PROPERTIES COMPANY



Brad Erickson  
Assistant Land Manager  
CERTIFIED MAIL/RETURN RECEIPT REQUESTED  
Enc. (1)

AGREEMENT

THIS AGREEMENT (“Agreement”) is made the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between Allen J. Eisenbeis whose address is 2979 Mesquite Drive, Idaho Falls, Idaho 83404, JoAnn K. Crabtree, whose post office is 14507 SE 27<sup>th</sup> Circle, Vancouver, Washington 98683, and Clyde T. Eisenbeis, whose post office address is 2819 Hogan Drive, Bismarck, North Dakota 58503 (hereinafter collectively called “Eisenbeis”), and The Coteau Properties Company an Ohio corporation with offices at 2000 Schafer Street, Suite D, Bismarck, North Dakota 58501-1204 (hereinafter called “Coteau”).

W I T N E S S E T H :

WHEREAS, Eisenbeis own certain land in Mercer County, North Dakota, more particularly described as follows (hereinafter called “Subject Land”):

Township 146 North, Range 88 West  
Section 34: NW4

WHEREAS, in the year 2012 Coteau, at the request of Esther Eisenbeis (previous owner of the Subject Land) and her renter Wayne Eisenbeis, hired a contractor to improve a preexisting diversion on the east side of the Subject Land, to improve an existing ditch on the north side of the Subject Land, and to install a creflex crossing through said ditch;

WHEREAS, Coteau completed such work in the interest of being a good neighbor;

WHEREAS, the creflex crossing provided satisfactory farm equipment access to the Subject Land until Eisenbeis entered into an agreement with a new renter in the year 2016 who had larger equipment than the previous renter.

WHEREAS, in 2016, Clyde Eisenbeis informed Coteau that the creflex crossing was not adequate to provide access for the new renter because of the new renter’s larger equipment;

WHEREAS, Clyde Eisenbeis has requested that Coteau construct a new approach on the north side of the Subject Land, as directed by Eisenbeis;

WHEREAS, Coteau accepts no responsibility to construct a new approach but is willing to construct a new approach as a good neighbor;

WHEREAS, Coteau (and any contractor it may hire) desires to obtain the consent of Eisenbeis to enter the Subject Land and construct a new approach on the north side of the Subject Land;

WHEREAS, Eisenbeis understands and acknowledges that construction and installation of the new approach could have unintended consequences on the Subject Lands because of reduced flows through the drainage ditch;

NOW, THEREFORE, Eisenbeis hereby authorize Coteau, or its contractors, to enter upon the Subject Land to construct a new approach on the north side of the Subject Land;

FURTHER, Eisenbeis acknowledge and agree that once the approach is completed, Coteau is released from any and all further liability in connection with the Subject Land and is not responsible for any maintenance, repair, or modification of said approach;

FURTHER, Eisenbeis acknowledge and agree that Coteau is not responsible for any damage to the Subject Land caused by the construction, installation, existence, or use of the new approach;

AND FURTHER, Eisenbeis agree 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.

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall collectively constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

GRANTORS:

GRANTEE:

\_\_\_\_\_  
Allen J. Eisenbeis

By: \_\_\_\_\_  
Bryan N. Walther, its President

\_\_\_\_\_  
JoAnn K. Crabtree

This contradicts the PSC statements that the Farmland disturbances are not mining related.

\_\_\_\_\_  
Clyde T. Eisenbeis

Definitions:  
**NAC:** North American Coal / Coteau  
**PSC:** ND Public Service Commission  
**Eisenbeis:** Clyde Eisenbeis  
**Farmland:** T146N R88W S34 NW1/4 (north of Beulah, ND)

# THE COTEAU PROPERTIES COMPANY

A SUBSIDIARY OF THE NORTH AMERICAN COAL CORPORATION

2000 Schafer Street, Suite D  
 Bismarck, ND 58501-1204  
 (701) 258-2200 • Fax (701) 222-7594  
 Toll-Free 1-877-258-3300

This is the **first time NAC** acknowledged receiving the **Eisenbeis** written authorization for installing the approach to the **Farmland**. Prior to this, **NAC** claimed they did not receive the **Eisenbeis** written authorization.

July 5, 2018

Clyde Eisenbeis  
 2819 Hogan Drive  
 Bismarck, ND 58503

Delivered via E-mail to [cte677@gmail.com](mailto:cte677@gmail.com)

RE: Township 146 North, Range 88 West  
 Section 34: NW¼  
 Mercer County, North Dakota

Dear Mr. Eisenbeis:

The Coteau Properties Company (hereinafter "Coteau"), is in receipt of the e-mail you sent to Sarah Flath, and several other individuals, on June 20, 2018.

In response to the questions posed in your e-mail, we did receive your May 1, 2017, September 15, 2017 and October 10, 2017 e-mail messages. We also received your referenced "written authorization." However, these e-mails, and your "written authorization" were not sufficient written documents to satisfy the terms between the parties. This is why we provided you with a written agreement, which was provided for the first time on May 19, 2017. You did not respond to Coteau but rather to the North Dakota Public Service Commission ("PSC"), and did not identify specific issues related to the agreement. Much later, on September 15, 2017, you again sent an e-mail to the PSC and indicated the agreement included items that were not relevant. But again, you did not communicate directly to Coteau nor did you provide any suggestions for changes. We strongly disagree with your assertion that the agreement includes items that are not relevant. Please understand that the first step in any action surrounding this approach required your signature on that agreement. We again provided the agreement to you in a letter dated September 22, 2017 and offered to install an approach. As Coteau did not receive a positive response to that offer, the offer lapsed on October 23, 2017, as noted in the letter.

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. We are also disappointed in the waste of public resources by continued inclusion of the PSC in what is at best a private matter between you and Coteau. We have yet to see anything but broad and baseless allegations and are growing tired of these continued provocations. Coteau is always willing to listen but cannot respond specifically to broad allegations with no evidentiary background. Please understand that should these actions continue in this manner we will be forced to identify all of our available legal options. Rather than doing that, we would prefer that you contact us directly at any time so that we could meet to discuss any direct, reasonable concerns you may have.

**Eisenbeis** did respond. On 15 Sep 2017, **Eisenbeis** sent an email to **PSC** staff and to **NAC** staff: Sarah J Flath, Brad Erickson, and Christopher Friez. That email included, "I have provided North American Coal with the written authorization to install the approach at the location shown to me ... see attachment. What else is needed?". **NAC** did not respond.

These written agreement contain this statement: "... 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."

This contradicts the topsoil on the **Farmland**, the **PSC** photos, and the **PSC** reports.

**Eisenbeis** views this as a threat.

NDCC and NDAC makes this a "North Dakota law" matter which makes this a "**PSC** matter". Before **NAC** puts a shovel into the ground, **NAC** must obtain a permit and follow North Dakota law.

This is like a robber telling a victim that this is a private matter should not involve the police.

Why did NAC block access to the farmland in 2012? NAC did not ask me for authorization to deepen the road ditch. NAC did not ask Mercer County for authorization to deepen the road ditch. NAC deepened the road ditch without authorization from anyone. Now NAC wants authorization from me to build an approach?

Sincerely,



Christopher D. Friez  
Land Manager

cc: Sarah Flath  
Brad Erickson

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**History Log (from phone log and emails)**

compiled by Clyde Eisenbeis

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Phone log has been kept for business calls (spanning many years).

Clyde Eisenbeis lived in Iowa.

Fall of 2011 Phone call from NAC (North American Coal)

- I was told of erosion on the farmland.
- NAC wanted to install a diversion ditch on the west side of the fence (on the east side of the farmland).
- I asked them to put the diversion ditch on the east side of the fence (land that NAC owned).
- I was told NAC could not as there are electric power poles in the way.
- I made some phone calls to learn more.

15 Nov 2011 Phone call with Bill Kirk, NAC

- I was told there are 5 poles, the closest pole is 24 feet. There is not enough room for a ditch
- I stated that a distance of 24 feet is plenty of room.
- Also, the electric power is not in use. The poles can be removed.

29 Nov 2011 Phone call with Bill Kirk, NAC

- I stated they could use steeper slopes and put diversion ditch on east side of fence.
- I also asked them to repair the erosion damage.

10 Apr 2012 Phone call with Bill Kirk, NAC

- I called to check if the farmland was repaired.

21 Nov 2014 Phone call with Troy Langang, NAC

- I was told that there is erosion on the farmland again.
- Bill Kirk is on medical leave.

17 Dec 2014 Phone call with Jerry Becker, NAC

- I was told that NAC plans to dig the diversion ditch deeper and wider.
- I re-stated that the diversion ditch should not be on the farmland.

Clyde Eisenbeis moved back to North Dakota in Oct 2015

6 Apr 2016 Phone call with Dean Gervich, Glen Ullin farmer

- I was told that he is interested in renting the farmland.

11 Apr 2016 Email from Dean Gervich, Glen Ullin farmer / potential renter

- He won't rent the farmland, because there is no approach.

- 13 Apr 2016 Meeting at the farmland with Bill Kirk, NAC Engineer, and Jerry Becker, NAC
- We met to review the approach location.
  - Jerome Boeshans and son Jayme Boeshans (decided to rent the farmland) were there too.
  - Based on Bill Kirk's comments:
    - The necessary engineering docs had been prepared
    - Those docs included a wide-angle approach for semis, and included two culverts.
  - After reviewing with Jerome Boeshans and Jayme Boeshans, I verbally approved the design and the location.
  - I was asked to obtain approval from the County Engineer. Ken Miller approved the approach on 9 May 2016.
  - NAC stated they could start installing the approach in two weeks.
  - I noticed the farmland was not level, from the erosion.
    - I asked NAC to level the farmland with topsoil.
    - NAC said it did not have any topsoil.
    - I requested that they find topsoil, so the farmland is level again.
  - There was no mention of requiring written authorization to install the approach.
- 19 Apr 2016 Meeting with Wes Gunsch, Mercer County Commissioner
- I was told the County Commissioners has no jurisdiction over the farmland.
  - I was told to contact the Mercer County Water Board and the PSC.
- 29 Apr 2016 Meeting with Brad Erickson, NAC
- I was told the approach could be installed in two weeks.
  - There was no mention of requiring written authorization to install the approach.
- 13 May 2016 Phone meeting with Greg Lange, Mercer County Water Board
- I was told the Water Board has no jurisdiction over the farmland.
  - I was told to contact the PSC.
- Esther Eisenbeis died on 18 Jun 2016
- 29 Jul 2016 Meeting with Brad Erickson, NAC
- Brad Erickson said it was too wet to install approach.
  - I asked how could farmers plant crops if it was too wet?
  - There was no mention of requiring written authorization to install the approach.
- 27 Oct 2016 I contacted the PSC
- 27 Oct 2016 Email from Guy Welch, PSC
- The PSC planned to visit the farmland.
- 13 Apr 2017 Email from Guy Welch, PSC
- The PSC looked at the site, and did not see any changes from last fall.

- PSC stated that NAC personnel had been in contact with me in an attempt to resolve this issue.
- The PSC will raise this issue with NAC next week.

28 Apr 2017 Email from Guy Welch, PSC

- "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."

28 Apr 2017 I emailed Guy Walsh, PSC, copied NAC

- "That is not true. Who told you that?"
- [There was no response]

1 May 2017 I emailed Guy Walsh, PSC, copied NAC

- "Attached is a document that is a written authorization to substantiate a verbal authorization to install an approach on the north side of:"

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27-146-88-00-34-400, Township 146 North, Range 88 West, Section 34, S1/2 of NW1/4

and

27-146-88-00-34-401, Township 146 North, Range 88 West, Section 34, N1/2 of NW1/4

The authorization was given verbally on 13 Apr 2016 to William Kirk and Jerry Becker, after being shown the proposed location of the approach.

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- "I am copying Brad Erickson, as he met with me on 29 Jul 2016. That is when he told me it was too wet to install the approach."

22 May 2017 Mail from NAC, agreement document

- [excerpt]

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"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."

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- I did not sign this doc. NAC should be held liable for damage to the farmland.

12 Sep 2017 Email from Dean Moos, PSC

- "In response to your inquiry, it is our understanding that on May 19, 2017 Coteau provided you with an agreement (see discussion below) to sign regarding construction of the approach. We also understand that the agreement has not been returned to them but that they will construct the approach once the agreement is signed and returned."

15 Sep 2017 I emailed Dean Moos, PSC, copied NAC

- "That North American Coal agreement document includes items that are not relevant to the deep ditch that blocks access to the farmland.
- I have provided North American Coal with the written authorization to install the approach at the location shown to me ... see attachment. What else is needed?
- Also note that there is, again, considerable damage to the farmland that was created by North American Coal's water runoff.
- North American Coal's attempts to fix this problem have created more damage to the farmland."

2 Oct 2017 Mail from NAC, agreement document

- [excerpts]

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"We sent you an Agreement regarding an approach on May 19, 2017 and received no response.

...

In response to your inquiry, it is our understanding that on May 19, 2017 Coteau provided you with an agreement (see discussion below) to sign regarding construction of the approach. We also understand that the agreement has not been returned to them but that they will construct the approach once the agreement is signed and returned."

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- I had responded on 1 May 2017 with a written authorization.

10 Sep 2017 Meeting at farmland with Jerome Boeshans and son Jayme Boeshans, renters

- New gullies in the farmland.
- I was told about the pond water netting found on the farmland, again.

15 Sep 2017 I emailed Dean Moos / PSC staff, and Sarah J Flath, Bradley Erickson, Christopher Friez / NAC

- New gullies in the farmland.

2 Oct 2017 I emailed Dean Moos, copied NAC

- "Attached is a document I received from North American Coal (NAC. It appears to contain multiple errors ... see my notes added to the document."
- [excerpts]

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"I sent an email response on 22 May 2017 at 7:11am to 'Welch, Guy A.' <gwelch@nd.gov>, 'Moos, Dean K.' <dmoos@nd.gov>, 'Flath, Sarah J' <sarah.flath@nacoal.com>, 'Erickson, Bradley' <bradley.erickson@nacoal.com>, and 'Friez, Christopher' <christopher.friez@nacoal.com>."

"Are Sarah J. Flath, Bradley Erickson, and Christopher Friez claiming that they did not receive my 22 May 2017 mail?"

...

"The NAC document contains this statement, '... fully indemnify and hold harmless ... of said approach and diversion.'"

"I am unaware of any damage to the farmland 'before' North American Coal became involved."

"There has been significant damage, multiple years, to the farmland 'after' North American Coal became involved. Damage to the farmland happened, again, this year."

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- [There was no response]

- 2 Oct 2017 Again I emailed Dean Moos, PSC staff, Sarah J Flath, Bradley Erickson, Christopher Friez / NAC
- New gullies in the farmland.
- 26 Oct 2017 Email from Rick Becker, ND Legislator
- Arranged for me to meet with Brian Kroshus, PSC Commissioner
- 22 Nov 2017 Meeting with Brian Kroshus, PSC Commissioner
- Brian agreed to investigate this.
- 18 Jan 2018 Meeting with Dean Moos, and staff, PSC
- I asked if NAC's actions were legal.
  - The PSC response was that they don't give legal advice.
  - I interpret this response as: 1) the PSC does not know the laws, or 2) the PSC is unwilling to help the public.
- 13 Apr 2018 I emailed Dean Moos, and staff, PSC, email
- Jerome Boeshans and son Jayme Boeshans (farmers / renters) want to plant corn. They need an approach for their corn planter.
  - [There was no response]
- 21 Apr 2018 I emailed Dean Moos, and staff, PSC
- The new gullies have not been repaired.
- 23 Apr 2018 Mailed a letter to Gov. Burgum
- There was no response.
- 26 Apr 2018 Meeting at farmland with Guy Welch, PSC, Bruce Beechie, PSC, Jerome Boeshans, farmland renter, and Jamie Boeshans, farmland renter
- We discussed the extensive damage to the farmland.
  - Guy Welch took photos of the damage to the farmland.
  - Guy Welch picked up some netting (from NAC ponds) in new erosion gullies.
  - The new gullies start on the east side, at the location where NAC lowered the berm by the fence.
  - The farmland renters stated their farming equipment has been plugged many times by this netting.
  - The creek, running through the land, was full of water. In the past, it was always dry.
  - Guy Welch said that the PSC did not require a permit for this farmland.

- 30 Apr 2018 Email from Bruce Beechie, PSC
- The email had an attachment that provided water table levels measured over a span of multiple years.
  - The records show that the water table, at the MP03-P018 location, has rising significantly, which has led to water flooding the southwest corner of the farmland.
- 3 May 2018 Phone meeting with Dean Moos, and staff, PSC
- Items discussed (I'm adding relevant details that were not mentioned):
    - 1) Why have the new gullies not been repaired?
      - Sarah J Flath, Bradley Erickson, and Christopher Friez were informed about the gullies on 15 Sep 2017 and 2 Oct 2017 via emails
        - PSC was copied on those emails.
    - 2) I described the discussion I had with Bill Kirk and Jerry Becker (at the farmland) on 13 Apr 2016 regarding the approach design and location.
      - The discussion can be verified by Jerome Boeshans and Jayme Boeshans (renters) who were at that meeting.
    - 3) The first time a written authorization for installing an approach was mentioned, was in an email from Guy Welch on 28 Apr 2017.
      - There had been no requests for written authorization prior to 28 Apr 2017.
    - 4) On 1 May 2017, I emailed a written authorization to install the approach.
      - Sarah Flath and Brad Erickson were copied on that email.
      - What else is needed?
    - 5) On 22 May 2017, I receive a written authorization from NAC that included that NAC should "not" be held liable for damage to the farmland.
      - I did not sign that document.
    - 6) The meetings with Brad Erickson on 29 Apr 2017 and 29 Jul 2017 are outlined above.
    - 7) Other emails / phone calls / meetings are outlined above (prior to this 3 May 2018 log).
    - 8) I was asked to email this doc to North American Coal.

Spring of 2018 renters accessed the farmland via a neighbor's farmland to plant a crop.

- 20 Jun 2018 Email from Sarah Flath, NAC
- The email "repeats" the bogus claim that I have not responded to an agreement written by NAC.
  - [Chris Friez, NAC, later acknowledged this is a false claim in a letter to me.]
- 5 Jul 2018 Email from Chris Friez and staff, NAC
- The email contains a letter as an attachment.
  - The letter acknowledges NAC has received my emails and attachments regarding written agreements (contrary to Sarah Flath's responses).
  - The letter claims the facts in this doc are baseless allegations.
  - The letter also claims that NAC has not caused any damage to the farmland.
- 6 Jul 2018 I emailed Chris Friez and NAC staff, PSC, Boeshans father / son farmland renters

- My email stated:

"Mr. Friez,

I am copying the PSC on this response, which includes your letter as an attachment.

I am also copying the Farmland renters who were at some of the meetings with Coteau and the PSC.

-----  
 On 13 Apr 2016 Bill Kirk and Jerry Becker showed us where they thought the approach could be installed (marked with wooden stakes). Jerome Boeshans and Jayme Boeshans were at that meeting at the Farmland. We approved the location of the approach. Bill Kirk and Jerry Becker thought they could start in a couple of weeks. Nothing was said about a written authorization.

On 29 Jul 2016 Brad Erickson told me the approach would be installed in two weeks. Nothing was said about a written authorization.

After waiting six months, on 27 Oct 2016, I contacted the PSC.

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 There is a major error in your letter. The facts show that Coteau has caused all of the damage to the Farmland. See the attachment for a summary and details.

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.

In addition, identify the facts you categorize as baseless allegations in the details section, date by date, including the pages with images."

- [There has been no response]

Summer of 2018 Phone call, etc. from Roger Kolling, ND State Water Commission

- The ND State Water Commission installed a raw water pipe along the west side of the farmland.
- While they dug a trench for the raw water pipe, they pumped water from the trench into the ditch (don't know how many days). The level of water in the creek dropped significantly.
- After installing the raw water pipe, they modified portions of the topsoil which disturbed portions of the erosion in that area. The ground over the trench is lower than the adjacent farmland topsoil.

23 Jul 2018 Email from Esther Jangula and staff, PSC

- Attachments were:

- A PSC letter (dated 23 Jul 2018) that states NAC is not responsible for farmland damage.
- A PSC Inspection Report (dated 26 Apr 2018).
- **The PSC letter contradicts portions of the PSC Inspection Report**

9 Aug 2018 I emailed Attorney General Office

- Sent history and requested information about relevant laws.
  - For a clarification of relevant laws, you will have to consult your own private attorney. We cannot provide such service to you.
  - We are prohibited by state law from providing any of the services you request or from reviewing a PSC action. My initial response to you was reviewed and approved by the Chief Deputy Attorney General before I sent it. Mr. Stenehjem is aware of your communications. There is nothing Mr Stenehjem or any of our staff can do for you.

21 Aug 2018 I emailed Guy Welch and staff, PSC

- I requested that the Inspection Report adds:
  - A map that shows the new gully originates where NAC lowered the berm by the fence
  - A photo of the NAC netting found in the gullies. (The farmland renters have found numerous pieces of netting on the farmland before ... plugs their farm equipment)
- [I requested this two more times in Aug and in Oct, to no avail.]

23 Aug 2018 I emailed Dean Moos, PSC

- I requested a map that documents the mining, location of ponds, and drainage paths.
- I requested relevant mining permits.

23 Aug 2018 Email from Dean Moos, PSC

- Mining permits NACT-9501 and NACT-9001 are the two relevant permits. Both of these permits are "paper copy" permits (not in an electronic format). ... The permit is available for viewing at the Commission's offices (13th Floor, State Capital) and at the Mercer County Courthouse.

28 Aug 2018 I emailed Dean Moos, PSC

- I requested size of the ponds, pond discharge paths (info received is conflicting)
- I requested if the ponds were lined (they were not)
- [Quite likely the ponds caused the water table to rise. One water table rose after the ponds were installed.]

28 Aug 2018 I emailed Dean Moos, PSC

- I requested info about rainfall data (because NAC claims the rain caused the water table to rise which flooded part of the farmland).

7 Sep 2018 Email from Dean Moos, PSC

- "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."

- 8 Sep 2018 Phone call from Jerome Boeshans, farmland renter
- Wanted to know if the approach will be installed so they can harvest their corn crop.
  - [I contacted Dean Moos, PSC. Never received a response.]
- 12 Sep 2018 Phone call from Jerome Boeshans, farmland renter
- Lucille Sailer has water in her farmhouse basement again because of NAC water flowing through the creek again (near her farmhouse).
  - [Additional proof that NAC pond water discharge is raising the water tables.]
- 12 Sep 2018 I emailed Dean Moos, PSC
- I requested if NAC released water into the creek
- 2 Oct 2018 Email from Dean Moos, PSC
- NAC had made the rainfall measurements. It is unknown if the measurements are accurate.
- 2 Oct 2018 Another email from Dean Moos, PSC
- Acknowledges that NAC has continued to release water from the NAC ponds.
- 15 Nov 2018 Email from Dean Moos, PSC
- PSC has been too busy to respond to my email inquiries.
- 3 Dec 2018 Meeting with Jason Dockter, ND Legislator
- I provided Jason with the history.
- 7 Dec 2018 I emailed Dean Moos, PSC
- 1) when was permit originally issued,
  - 2) how many times was the permit renewed,
  - 3) list the permit revisions (including subject) along with dates issued,
  - 4) what is the current permit status,
  - 5) what is the performance bond status,
  - 6) has performance bond been released in total or phases,
  - 7) on what date did the ten year responsibility period start and how many years remain for that performance responsibility period,
  - 8) has the permit ten year responsibility period been restarted for any compliance reasons,
  - 9) are some, or all, of these basic permit questions been compiled and readily available?.
  - 10) What are the dates of the water discharges from the ponds, and the volume of water for each date?
- 21 Dec 2018 Email from Dean Moos, PSC
- Mining permits NACT-9501 and NACT-9001 are the two relevant permits. Both of these permits are "paper copy" permits (not in an electronic format). ... The permit is available for viewing at the Commission's offices (13th Floor, State Capital) and at the Mercer County Courthouse.

- One attachment was a NDPDES (Dept. of Health) pond water discharge volume and dates.
- 10 Jan 2019 Email from DOH ... ND Dept. of Health
- DOH provided a link to NAC pond water discharge dates and volumes. The DOH records state that NAC discharged millions of gallons of pond water into the farmland creek. This volume of water has flooded the southwest corner of the farmland.
- 7 Jan 2019 Meeting with Nicole Poolman, ND Legislator
- I provided Nicole with the history.
- 12 Jan 2019 Email from Nicole Poolman, ND Legislator
- Recommended I hire an attorney.
- 23 Jan 2019 Email from Rachel Grimm, Mercer County
- There was no Mercer County permit to deepen the ditch.
- 25 Mar 2018 I emailed Dean Moos, PSC
- Did North American Coal inform the PSC when pond water discharge caused farmland erosion in 2011 and 2014?
  - Does the PSC have photos of that erosion?
- 31 Mar 2019 Phone call from Lucille Sailer, has farmhouse close to farmland creek
- NAC discharging pond water into the farmland creek has caused flooding in her basement.
- 8 Apr 2018 (I received a FLASH stick from Dean Moos, PSC
- The FLASH stick contained:
    - 2011 and 2014 Inspection Reports
    - Photos from 2011 and 2014
    - **The photos contradict the PSC letter (dated 23 Jul 2018)**
- 8 Apr 2018 I emailed Dean Moos, PSC
- Why are the photos of the erosion not included in the 2011 and 2014 reports? The erosion is significant. There is loss of topsoil and loss of crop income.
  - [there has been no response.]
- 11 Apr 2019 Meeting at the farmland with Ken Miller (Mercer County Road Sup.), Dwight Berger (County Commissioner), Jerome Boeshans and Jayme Boeshans, farmland renters
- Ken Miller mentioned inviting Jessica Binder, Mercer County State's Attorney to view the ditch.
  - Dwight Berger mentioned discussing this at a County Commissioner Meeting.
  - Clyde Eisenbeis agreed to forward this history doc to Ken Miller and Dwight Berger.
- 11 Apr 2019 Meeting with Lyle Eisenbeis, adjacent farmland owner
- Lyle Eisenbeis remembers Perreault Construction, Beulah, digging the ditches for NAC.

- 17 Apr 2019 I attended Mercer County Commission meeting, Duane Scheurer, Wes Gunsch, Marvin Schwehr, Wayne Entze, Dwight Berger
- The gist of my comments were:
    - Starting in 2011, Coteau discharged millions of gallons of pond water into the farmland creek.
      - This resulted in extensive erosion and flooded part of the farmland.
    - To handle that flow of water, Coteau deepened the road ditch, which blocks access to the farmland.
      - My question to the County Commissioners: "Is this legal."
  - The Community Commissioners' response was to investigate this.
- 15 May 2019 I emailed the PSC
- [A Formal Complaint](#). The email also included these statements: "Please forward this email and attachments to: Brian Kroshus, Commissioner, Julie Fedorchak, Commissioner, Randy Christmann, Commissioner, Attached are: 1) A copy of a letter to the ND PSC Commissioners, 2) A letter to the OSMRE Casper Field Office Director, 3) An OSMRE Formal Citizen Complaint."
- 30 May 2019 Email from Dean Moos, PSC
- The email stated, "The Reclamation Division is drafting a response to your May 15, 2019 filing, and our recommendation to the Commission. Our recommendation and proposed response will be provided to the Commissioners for discussion at the Administrative Matters portion of the Commission's Regular Meeting on June 12, 2019. You are welcome to attend the meeting, listen to the meeting via phone, or listen to the meeting broadcast via the Commission's website."
- 10 Jun 2019 Email from Dean Moos, PSC
- The email had two attachments. A PSC Division (Dean Moos) recommendation (in the form of a letter dated June XX, 2019) and a NAC letter dated 19 Jun 2018.
    - I had not seen either letter prior to 10 Jun 2019
  - I responded on 11 Jun 2019, via email, to Dean Moos with comments added onto both letters (in blue font).
  - On 11 Jun 2019, Dean Moos forwarded my comments (on the PSC Division recommendation letter draft) to the PSC Commissioners.
- 12 Jun 2019 Meeting at 10am at PSC with PSC Commissioners and Dean Moos
- I was not allowed to make comments at this meeting.
  - When my Formal Citizen Complaint was mentioned, a second meeting was scheduled for 2:30pm to continue discussion about this complaint. I was not allowed to make comments at either meeting.
  - Prior to the PSC 2:30pm meeting, I attempted to give a written doc, to the PSC Commissioners, that contained questions I would like to hear asked (because I was not allowed to speak). The PSC Commissioners refused to read that written doc.
  - The PSC Commissioners:
    - Discussed the PSC Division (Dean Moos) recommendation letter draft.

- Did not discuss the contents of my complaint, or my comments added to the PSC Division recommendation letter draft.
- Asked Dean Moos about the diversion ditch prior to NAC modifying it.
  - Dean Moos did not state the PSC had photos of the diversion ditch prior to NAC modifying it.
  - Dean Moos did not state there were diversion ditch photos on page 5 of my complaint.
  - I was not allowed to speak.
- Did not mention the "contradictions" I had stated: 1) in my complaint, and 2) onto the PSC Division recommendation letter draft.
  - From a distance I saw that Julie Fedorchak had my comments (with blue font) to the PSC Division recommendation draft.
  - My comments in the complaint and on the PSC recommendation draft were never mentioned.
- The PSC Commissioners approved the PSC Division recommendation letter draft. The PSC Commissioners comments implied they never read the Eisenbeis Complaint or comments on the PSC Division recommendation draft letter.
  - Brian Kroshus, PSC Commissioner, had read the Eisenbeis History doc with photos when he met with Eisenbeis on 22 Nov 2017.

2018 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.

1 Jul 2019 Meeting with Jason Dockter, ND Legislator

- Jason planned to meet at the ND Attorney General Office.
- After this meeting, never returned phone calls or emails.

26 Jul 2019 (I started exchanging emails with Dean Moos, PSC

- *1 Aug 2019, to Dean Moos*, "I received "photos" and "photo locations" of our farmland in 2011 and 2014. **I'm interested in 'every' photo and every photo location of the 'NAC land' east of our farmland in 2011 and 2014.**"
  - *9 Aug 2019, from Dean Moos*, "We have provided every photograph that we are aware of for your area of concern."
- *11 Aug 2019, to Dean Moos*, "Are you claiming that there are no other photos of the land east of our farmland where the ponds were located?"
- *27 Aug 2019, to Dean Moos*, "Still waiting for a response to my question. Are you claiming that there are no other photos (2011 and 2014) of the land where the ponds were located (east of our farmland)?"
  - *17 Sep 2019, from Dean Moos*, "We have searched all the photo files of current and former employees and have not found any additional photos."
- *18 Sep 2019, to Dean Moos*, "Are you claiming the PSC took no photos of the pond and water overflow path on NAC land when the ponds overflowed?"
  - *20 Sep 2019, from Dean Moos*, "...*17 Sep 2019, from Dean Moos*, "We have searched all the photo files of current and former employees and have not found any additional photos."
- ... more emails

- 7 Nov 2019, email from John Schuh, PSC, "Based on your request I just wanted to follow-up to let you know that we believe that we have provided the documentation that is the subject of your request."
- ... more emails
- 6 Feb 2020, to Dean Moos, "You did not answer the question. **Did the PSC 'take' those photos?**"
  - 9 Aug 2019, from Dean Moos, "I believe all the photos we have provided were taken by PSC Reclation Division staff."
- **Dean Moos, PSC never answers the question.**

1 Oct 2019 (I wrote a letter to the ND Ethics Commissioners

- Commissioners are David B. Anderson, Ronald Goodman, Ward Koeser, Cynthia Lindquist, and Paul Richard.
- I provided docs and a link to Beulah.FoxPing.com.

19 Nov 2019 (I received a letter from the Office of Attorney General

- "... the Ethics Commission ... Board concluded that the complaint alleged no violation that falls within the substantive jurisdiction of the Ethics Commission ....
- "... the Board ... will take no further action".

10 Aug 2020 (I received a phone call from Lucille Sailer

- NAC is discharging pond water into the farmland creek from a mining operation south of the farmland. Her land is flooded again.
- The PSC inspected the Lucille Sailer farmland on 12 Aug 2020 and wrote an Inspection.
- NAC ceased discharging pond water into the Farmland creek immediately.
- Our Farmland flooding increased.

=====  
 There have been many more emails. This history log attempts to summarize them.  
 =====

The PSC Commissioner Meeting, 12 Jun 2019, Questions not allowed.  
10-Sep-2020

Appendix F

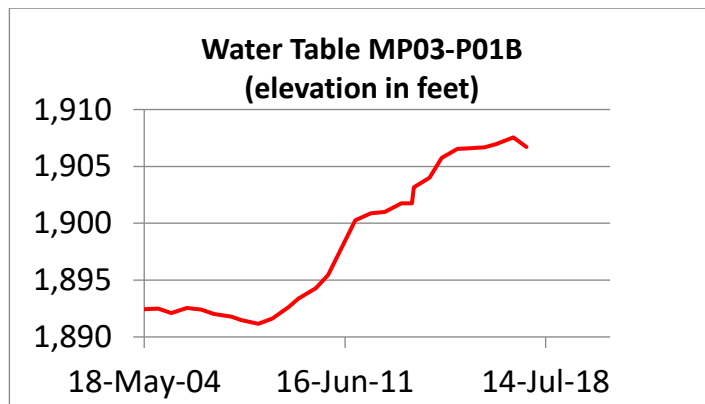
These are the questions Clyde Eisenbeis was not allowed to ask at the 12 Jun 2019 PSC Commissioner Meeting to discuss the Eisenbeis family complaint about North American Coal (NAC).

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11 Jun 2019

- 1) Why did the PSC take photos of Esther Eisenbeis farmland, in 2011 and 2014, if it was not coal mining related?
- 2) Why did the PSC state it is not coal mining related if pond water netting was found on the Esther Eisenbeis farmland?
- 3) Why was the NAC letter, dated 19 Jun 2018, not given to Clyde Eisenbeis until a year later on 10 Jun 2019? The PSC Commissioner meeting was on 12 Jun 2019.
- 4) Why did the PSC not question the contents of that NAC letter? The PSC photos dated 8 Oct 2008, prove the ditches were not filled with sediment.
- 5) Why did the PSC not question the missing statements about the mining sedimentation pond water overflowing onto the Esther Eisenbeis farmland?
- 6) Why did the PSC not ask Clyde Eisenbeis if he was involved in the design and layout of the proposed diversion ditch? He did not. He lived in Iowa.
- 7) Why did the PSC not ask Clyde Eisenbeis to verify the accuracy of that NAC letter? There are false statements in that letter. Does the PSC classify this as ok?
- 8) Will NAC be held accountable for a dishonest letter that was used to make a PSC final decision?
- 9) Why does the PSC not question NAC why NAC deepen the road ditch if it is not mining related? Did NAC deepen the road ditch to penalize the Eisenbeis family because they did not allow NAC to discharge more pond water from the south mine into the farmland creek?
- 10) NAC falsely stated they did not have written authorization to install an approach. Later, they admitted they did have written authorization. Why did the PSC not question this?
- 11) Why does the PSC allow NAC to block access to farmland? The NDCC laws are to protect people and their property.
- 12) The PSC final decision letter states that the Eisenbeis family formal complaint was "unclear". If the Eisenbeis family formal complaint was "unclear", why was Clyde Eisenbeis not asked to clarify?

- 13) Why does the PSC think the pond water discharge into the farmland creek did not also flow south? The ground in that area is quite level. Water discharged into the farmland creek will flow north and south. It caused Wayne Eisenbeis to get often get stuck in his field (south of the Esther Eisenbeis farmland) after pond water was discharged into the farmland creek.
- 14) Why does the PSC ignore the water table elevations increasing to the farmland elevation (a half mile south of the Esther Eisenbeis farmland) during the years that pond water was discharged into the farmland creek? This eventually flooded part of the Esther Eisenbeis farmland. This is mining related.



- 15) Why does the PSC ignore?
- North Dakota Century Code 38-14.1-02 (35 b) - pdf document - "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"
  - North Dakota Administrative Code 69-05.2-01-02 (1) - pdf document - "**Adjacent area** means land located **outside** the affected area or **permit area**"
  - PSC Memorandum 6 to Mine Operators, March 8, 1995 - pdf document, March 8, 1995 - "Listed below are specific activities and types of disturbances which are included under the scope of 'Surface Coal Mining Operations,' as defined in NDCC Section 38-14.1-02(33). These **activities and disturbances** must be conducted **within the boundaries** of a **surface coal mining permit**."
- 16) Why was NAC not required to apply for a permit before they dug on the Esther Eisenbeis farmland? NAC needs a permit to dig on land NAC owns. Does NAC need a permit to dig on land someone else owns?
- 17) Clyde Eisenbeis met at the farmland with Jerry Becker, NAC, and Bill Kirk, NAC, on 13 Apr 2016. The farmland renters, Jerome Boeshans and Jayne Boeshans were there too. Jerry Becker stated NAC would install an approach, within a few weeks, at that meeting. Later, NAC wanted permission to discharge pond water into the farmland creek from mining to the south of the farmland. Clyde Eisenbeis

did not approve of this, as the farmland was already flooded. That is when NAC reneged on building an approach. Clyde Eisenbeis does not trust anything else Jerry Becker or other NAC employees say. Since then, everything is in writing via documents and emails.

Road ditch on 8 Oct 2008



Road ditch on 3 Jun 2021



Diversion ditch on 8 Oct 2008



Diversion ditch on 16 Sep 2014



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After the meeting Clyde Eisenbeis requested PSC photos of the NAC land. The PSC states they do not have photos of the NAC land.

- a) Did the PSC take photos of the NAC land on those days? The PSC response has been they don't have photos.

The PSC never states they did not take photos.

- b) Why would the PSC take photos Esther Eisenbeis farmland but not take photos of NAC land?

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 2819 Hogan Dr  
 Bismarck, ND 58503



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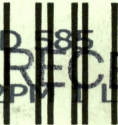
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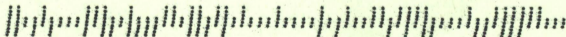
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Ms. Sarah Flath  
 Environmental Manager  
 The Coteau Properties Company  
 Freedom Mine  
 204 Couty Road 15  
 Beulah, ND 58523



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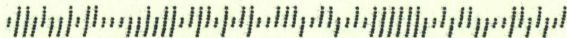
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Ms. JoAnn Crabtree  
 14507 SE 27th Cir  
 Vancouver, WA 98683-7630



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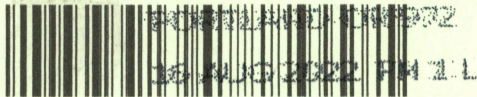
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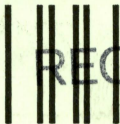
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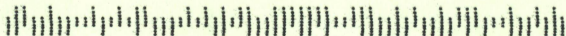
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Mr. Allen Eisenbeis  
 2979 Mesquite Dr  
 Idaho Falls, ID 83404



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