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Public Service Commission Formal Complaint:

Complaint to: North Dakota Public Service Commission

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

Complainants: Clyde Eisenbeis, Allen Eisenbeis, JoAnn Crabtree

Respondent: North American Coal

4122 County Road 15

Latitude and Longitude:

47.426, -101.88

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

Appendix A - PSC Complaint Decision Letter - 13 Jun 2019

Appendix B - North American Coal Dishonest Response Letter - 19 Jun 2018

Appendix C - North American Coal Proposed Approach Agreement - 22 Sep 2017

Appendix D - North American Coal Threatening Letter - 5 Jul 2018

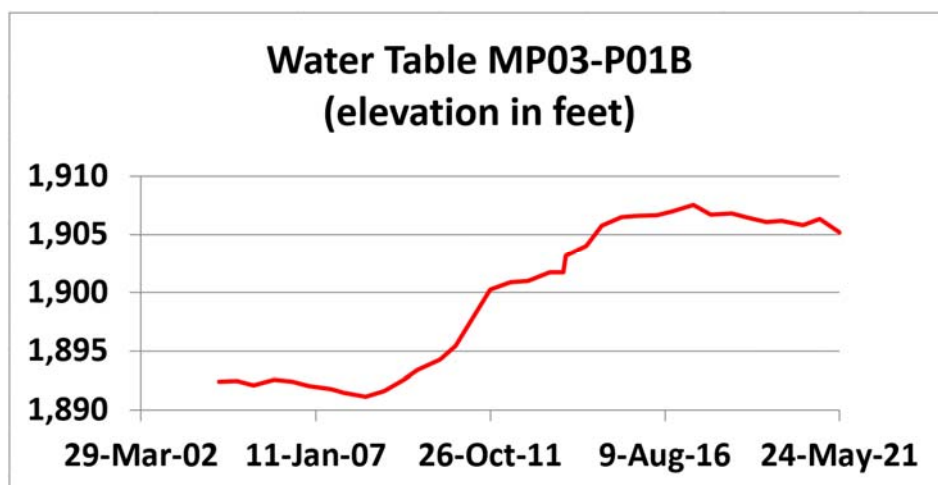
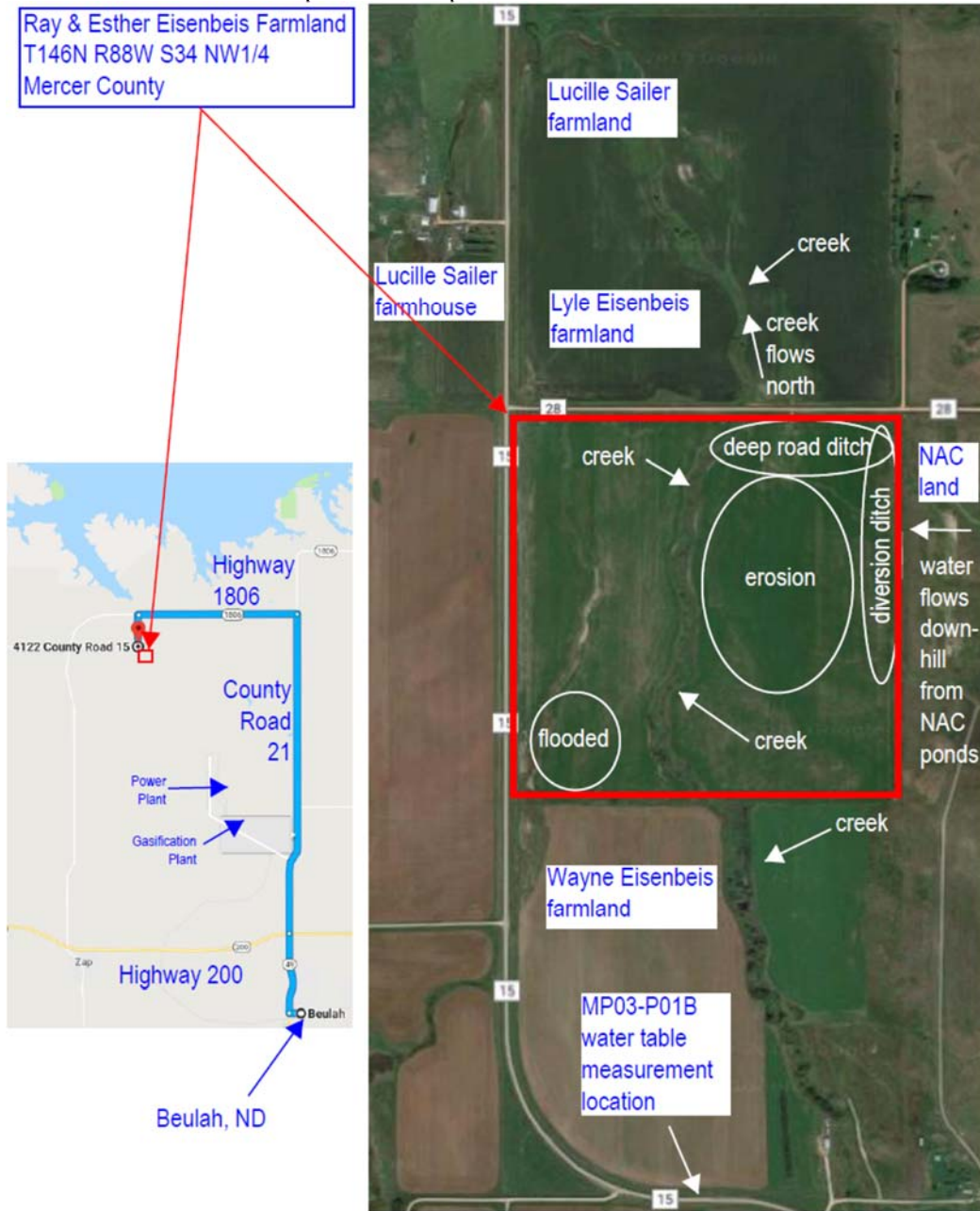
Appendix E - Eisenbeis Farmland History Log

Appendix F - Questions not allowed at the Informal Complaint Meeting - 12 Jun 2019

Definitions:

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

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.

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- **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.

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**"

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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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**?

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?

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.

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.

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

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

- **Eisenbeis** was surprised the **PSC** would state this. He had assumed the **PSC** would protect people and their property.
 - **Eisenbeis** did not know the **PSC** had inspected the **Farmland** before.
 - **Eisenbeis** did not know the **PSC** had photos of the **Farmland** from previous years.
 - **Eisenbeis** did not know the **PSC** had written reports about the **Farmland**.

On 28 Apr 2017, **Eisenbeis** received an email from the **PSC**. That email included this statement, "... *Coteau had been willing to provide you with an approach but that you would not sign an agreement to allow them to construct the approach.*"

- This is not true. This was the first mention of a written agreement.

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

On 19 May 2017 and on 22 Sep 2017, **NAC** mailed their version of a written authorization to **Eisenbeis**. The **NAC** version contained this statement: "*Eisenbeis agrees to fully indemnify and hold harmless Coteau against any and all claims, losses, expenses, actions, causes of action and liability of whatsoever kind or nature arising from the use or existence of said approach and diversion.*"

- **Eisenbeis** did not sign this document. **Eisenbeis** had already provided a written authorization.
- If this is not related to coal mining, why did **NAC** include this statement?

The approach was never installed.

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

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

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

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

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

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.

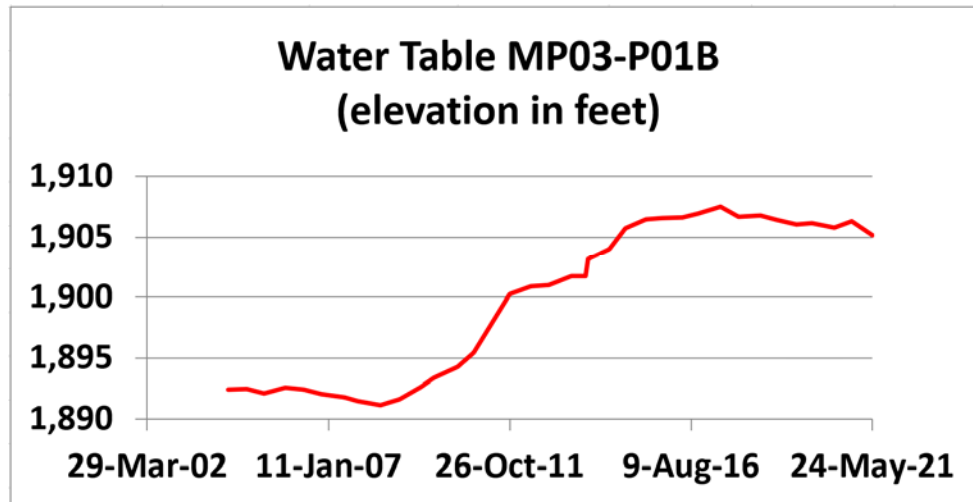
The 2018 **NAC** letter states, "Coteau has not caused any damage to your land and we are losing patience with these continued baseless allegations against us, which are most often not made directly to us, but through e-mails sent to the **PSC**."

- **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.

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.

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).

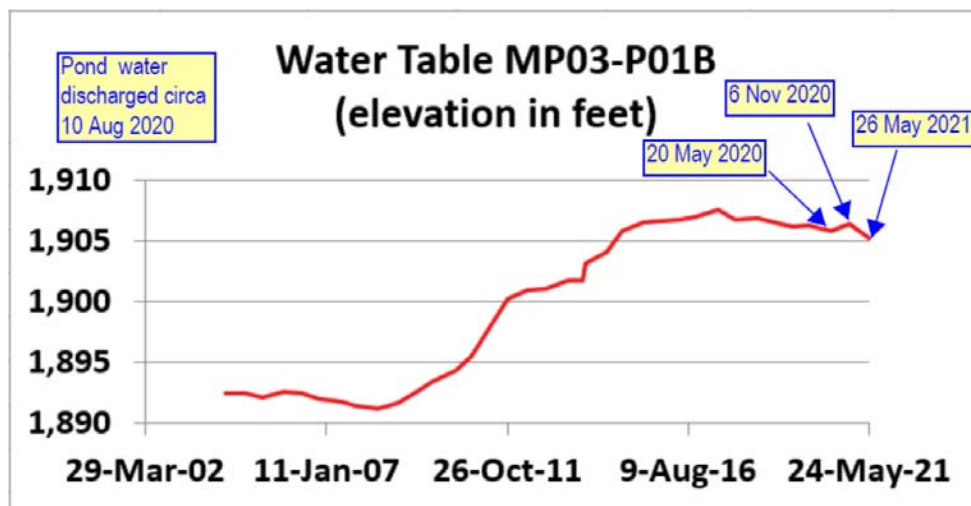
On 12 Jun 2019 the **PSC** Commissioners changed the **Eisenbeis** Formal Complaint to an Informal Complaint.

- 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.

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.



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.

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PSC Photos:

PSC Photos dated 8 Oct 2008

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



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



Original road ditch.



PSC Photos dated **31 Aug 2011**

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



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



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



Original diversion ditch with Pond water overflow erosion not visible.



PSC Photos dated **31 Aug 2011**

Pond water overflow erosion of Farmland.



PSC Photos dated **31 Aug 2011**

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



PSC Photos dated **16 Sep 2014**

Pond water overflow erosion of Farmland.



PSC Photos dated **16 Sep 2014**

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



PSC Photos dated **26 Apr 2018**

Farmland erosion - new gullies.



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.



PSC photos dated **6 Mar 2008**.

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



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



PSC photos dated **31 Aug 2011**.

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**.

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



PSC photo dated **16 Sep 2014**.

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



PSC photos dated **6 Mar 2008**

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



PSC photos dated **16 Sep 2014**

NAC modified the original diversion ditch.



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

- Water in the **Farmland** creek was seen by **Eisenbeis**, Guy Welch (**PSC**), and Jayme and Jerome Boeshans (**Farmland** renters).
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Photo taken on dated **26 Jul 2022**

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



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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.



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Farmland Lost Estimations and Calculations:

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



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



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Bottom Line Summary:

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

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

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

“Even” if this were “not” related to coal mining, would **NAC** be allowed to damage other people’s property?

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

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

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

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

Bottom line #3: **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?

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?

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

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

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

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

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

- Contact the county sheriff
- Contact the land owner.

- Write a complaint for the landowner.
- Require **NAC** to obtain a **permit**.
- Require **NAC** to restore the land to its original condition.

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**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.

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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.

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**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.

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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.

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

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

See **Executive Summary Background** for details.

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

**Requested Relief #3:**

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

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

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**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.

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**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.

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**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.

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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.

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**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.

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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.
