

Public Service Commission Formal Complaint:

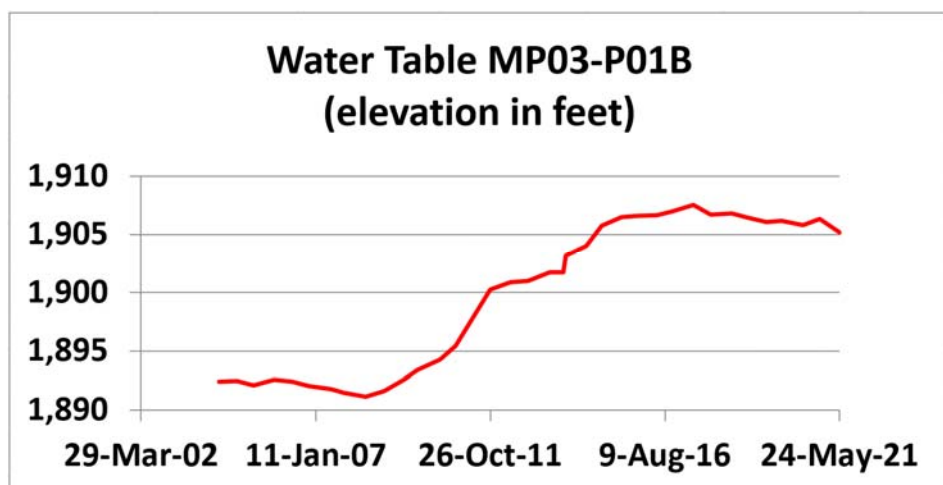
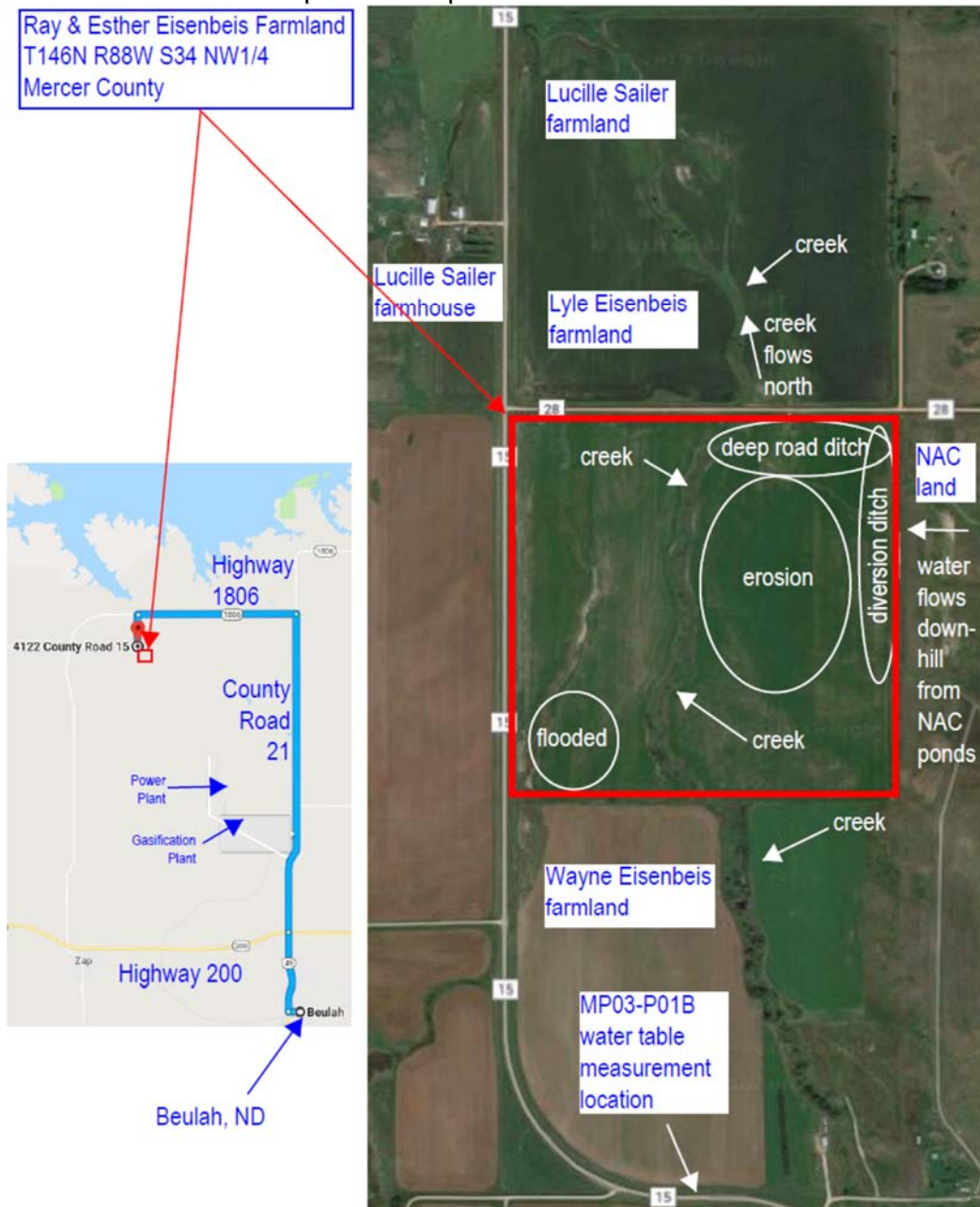
4122 County Road 15

Latitude and Longitude:
47.426, -101.88

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

- 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.



Executive Summary Complaint:

- 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.

- 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.

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

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

North Dakota Century Code (NDCC):

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

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

North Dakota Administrative Code (NDAC)

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

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

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

Executive Summary Background:

- 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, told NAC that the diversion ditch should be installed east of the Farmland on NAC property.

- 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?

- 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?

- 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.

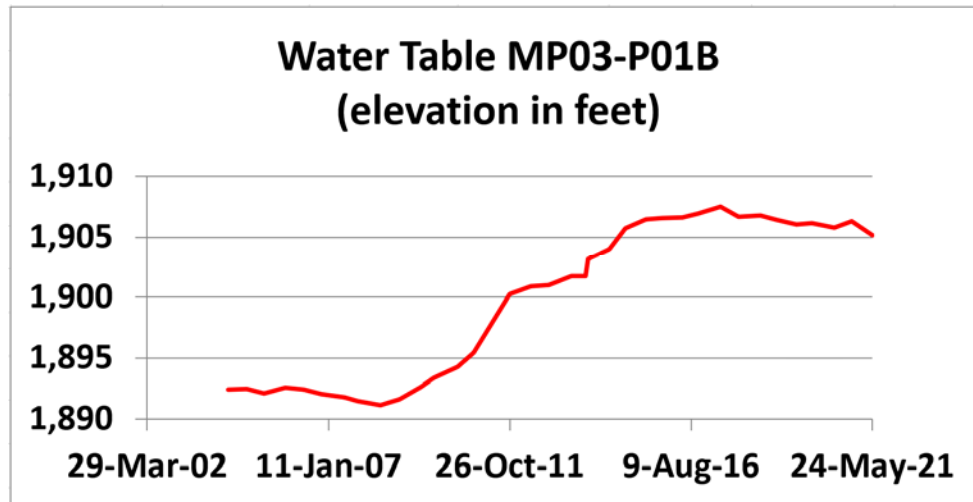
The 2018 NAC letter states, "Coteau has not caused any damage to your land and we are losing patience with these continued baseless allegations against us, which are most often not made directly to us, but through e-mails sent to the PSC.

- 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).

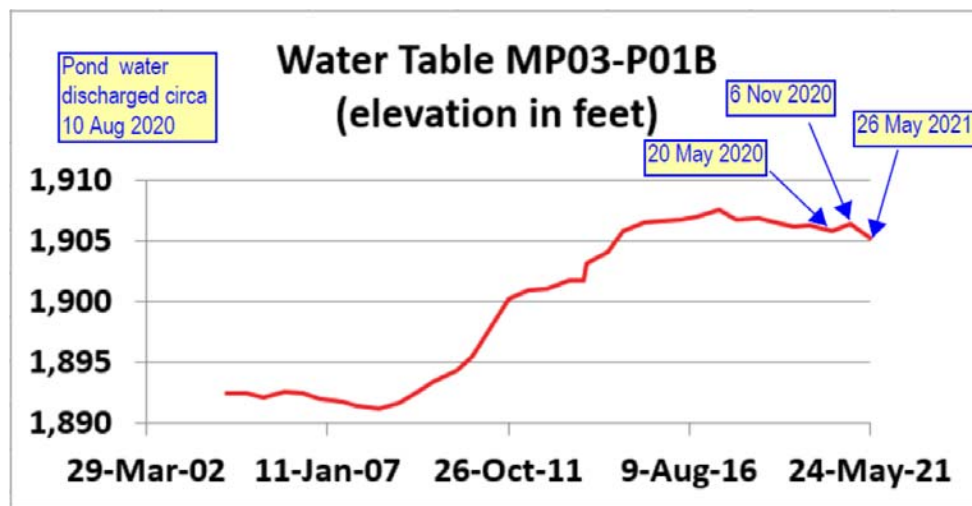
On 12 Jun 2019 the PSC Commissioners changed the Eisenbeis Formal Complaint to an Informal Complaint.

- 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.

PSC Photos:

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



A landscape photograph showing a dirt road winding through a field of tall grass and shrubs. In the background, there are rolling hills and several utility poles under a clear blue sky. The date and time "10.08.2008 12:52" are printed in orange in the bottom right corner.



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.





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**

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



PSC photos dated **16 Sep 2014**

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NAC modified the original diversion ditch.





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

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

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





## Photo Summary #1:

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.

A landscape photograph showing a dirt road winding through a field of tall, dry grass. In the background, there are rolling hills and several utility poles under a clear blue sky. A timestamp '10.08.2008 12:52' is visible in the bottom right corner.



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.





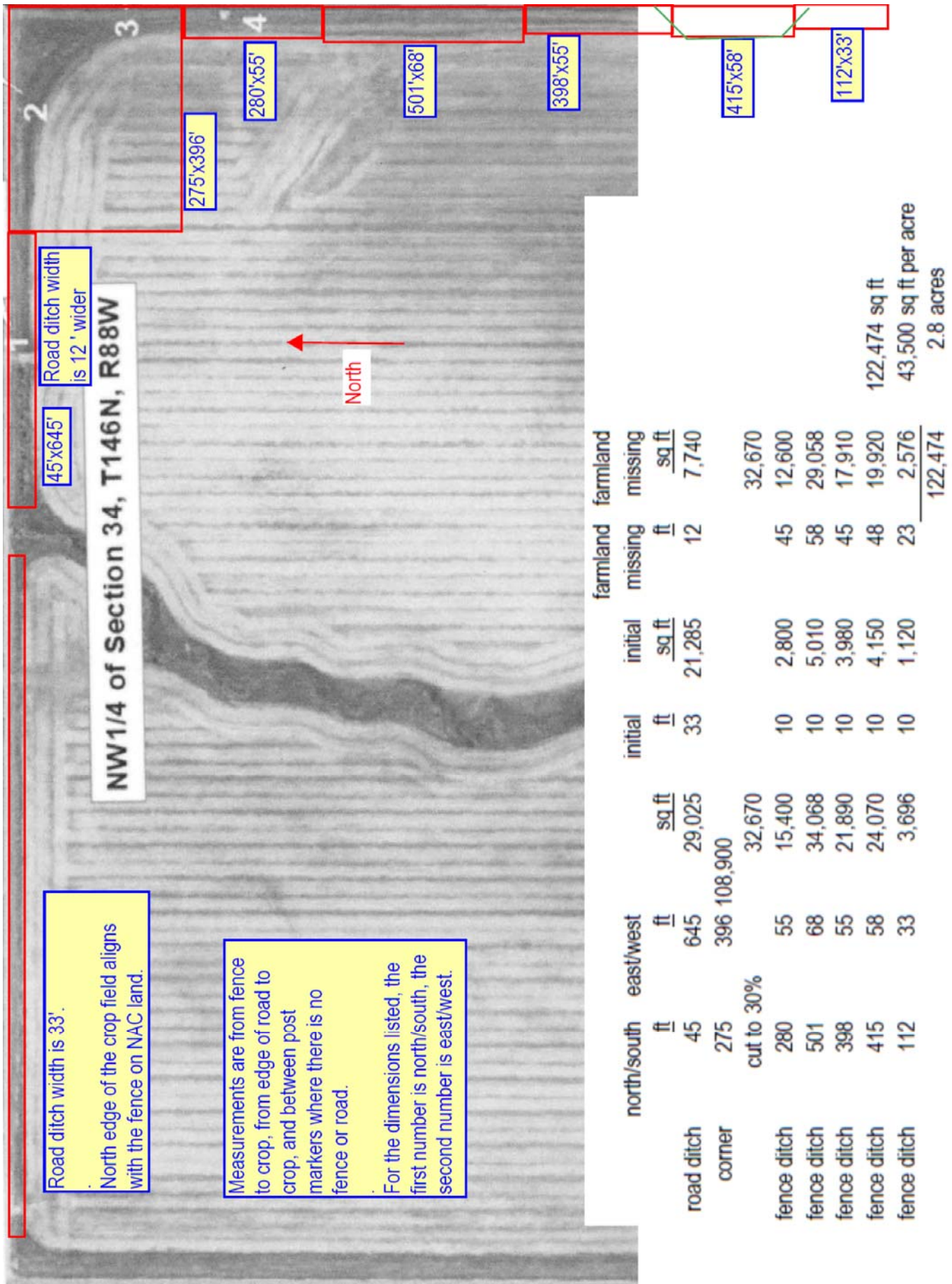
PSC Photo **28 Jun 2018** ... Farmland erosion continues.



### *Farmland Lost Estimations and Calculations:*

An aerial photograph of a land parcel, outlined in yellow. The parcel is divided into several sections with numerical labels: 34.65, 32.20, 6.35, and 82.64. A small section is labeled 'NW'. The parcel is bounded by roads labeled 15 and 28.





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





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### *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?

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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.

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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.

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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.

~~~~~  
**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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Opening comments:

.
A rhetorical question. Why am I on a witness stand? I didn't do anything wrong. All I did was report a crime. Is it against the law to report a crime?

.
But I will proceed.
.

The sources for the contents of the Formal Complaint come from:

- PSC Photos
- PSC Reports
- PSC letter
- NAC letters
- ND Century Code, ND Administrative Code, and PSC Memorandum
- Emails
- Memo Pad, an electronic notebook.
 - o Computer program written by me about 40 years ago
 - Updated periodically for new versions of Microsoft Windows.
 - o Similar to a spiral notebook except it will find only the pages that contain the words that are sought.
 - o Memo Pad was used at my work place and at home. It is still used at home.

,
All of the dates and events, in the Formal Complaint and Appendices are accurate. Everything in this doc is relevant.

.
You are welcome to ask me questions at any time during this presentation.

Closing comments:

.
One (or more) NAC exhibit use the word "model". Note that models are often inaccurate.

.
A good example is the global warming models which supposedly proved, many years ago, that parts of the US would be underwater by now. This did not happen. That model was incorrect.

.
Code writers, who write code for models, can produce any result they want. If the model result is not what they want, they can keep modifying the code until the model produces the result they want.

.
Global warming models proved that the ocean is rising. This is incorrect.

.
A good example is Florida / sink holes. The land elevation is dropping. The ocean is not rising.

.
The ocean cannot be higher in some places of the world and not higher in other places of the world. Higher ocean levels would affect "all" land throughout the world, not just some parts of the world.

.
NAC was present at the last PSC inspection of our farmland

- Why was NAC invited?
- Does NAC review and approve the wording of the PSC inspection report, before it is published?

1) Retired and moved back to ND ... because everyone is honest.

2) Worked at Texas Instruments, 3M, and Emerson. Worked with companies such as IBM, Hewlett Packard, Tektronix, Fluke.

- Every company was open and honest.
 - o Ditto for all co-workers.
- Assumed all companies were honest.
 - o Unlike TV and movies
- Shocked that NAC is not. Did not expect that.
 - o Major difference with NAC => captive customers
 - o Electricity.
- Unfortunately NAC believes it is ok to damage other's property.

3) As an example, a person has an above ground swimming pool in his backyard.

- The pool wall collapses.
- Water flows into the neighbor's yard and into their house basement
 - o This is criminal.
- The pool owner digs a ditch "in the neighbor's yard" to ensure this does not happen again.
 - o This is criminal.
- The pool owner digs a ditch "across the neighbor's gravel driveway" which blocks access to the garage.
 - o This is criminal.

4) The PSC rules are also surprising.

- If a co-worker listed the PSC rules and regulations – had me guess which state?
 - o #1 California
 - o #2 New York
 - o #50 ND
- My parents, aunts / uncles, grandparents – would have given up because of rules, etc.
 - o They would not spend hundreds of hours gathering information.
 - o They would not write a detailed report.
 - o They would never appear in a court environment.
 - o Police never do that to people who report a crime.
- How many people have not contacted the PSC because of these rules?

5) How many others have had bad things perpetuated by NAC?

- I know Beulah area residents ... in town, north of town, and south of town.
- I've been told that they do not speak up because:
 - o They or their relatives could lose their job at NAC
 - o The PSC always rules in favor of NAC.

6) It would be good if the PSC Commissioners strived to:

- Have procedures that are similar to police procedures.
- Avoid penalizing common citizens, farmers and city folks, with complex rules.
- Do not expect them to know NDCC.
- Do not expect them to hire an attorney.
- Help them.

7) Bottom line.

- The 2008 photos show the farmland as it had been for decades.
- Every other photo shows the farmland after it had been damaged by NAC.
 - Pond water overflow
 - Modifying the farmland by digging ditches.
 - Discharging pond water into the farmland creek which flooded farmland.
- Why should we use retirement savings to fix problems created by NAC.
 - We were bystanders.
 - We did not modify the land. NAC did.
 - NAC's attempts to fix the problem made things worse.
 - Now "we" are supposed to use retirement savings to pay for the damages made by NAC?

%%%%%%%%%

NAC should be held liable for damaging our property.

%%%%%%%%%