

BUSINESS

North Dakota landowner says North American Coal owes him a field approach


A Bismarck, North Dakota, man said he's frustrated that a coal company damaged the access to a farm field he owns near Beulah, North Dakota. He refuses to accept the company's offer to build a new field approach if they would have no further responsibility for flood damage and digging a deep diversion ditch. Further, he thinks he shouldn't have to pay legal fees to get the North Dakota Public Service Commission to regulate ditching that he says is clearly mine-related.



Clyde Eisenbeis of Bismarck, N.D., stands in a “drainage ditch” deepened in 2012 by North American Coal on the edge of a quarters-section farm field his family owns, in rural Beulah, North Dakota. He said the company orally agreed to install an adequate approach and culvert system, but he refused to sign documents making them immune from any related damage. Photo taken June 3, 2021, near Beulah, N.D. Mikkel Pates / Agweek

By [Mikkel Pates](#)

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BEULAH, N.D. — Clyde Eisenbeis is a frustrated farmland owner.

He said North American Coal a decade ago dug a ditch on his family’s farmland to drain water away from their coal mining sedimentation ponds. The ponds overflowed and damaged farmland and crops in 2011 and 2014. He said NAC dug a deep drainage ditch on the farmland in 2012 and 2014, without proper authorization.



Clyde Eisenbeis, 72, of Bismarck, North Dakota, thinks North American Coal company should pay for a field approach to his family's farmland, right. He said the company made his field inaccessible to loaded trucks when they dug a drainage ditch to remove mine-related water. Photo taken June 3, 2021, near Beulah, North Dakota. Mikkel Pates / Agweek

The coal company, in documents, said it dug at the “request” of his cousin, the former land renter, and his elderly mother, who Eisenbeis said for 10 years had been suffering from Alzheimer's and was obviously “incapable of making decisions.” He said they deepened it without authorization from Mercer County.

The ditch was deep so the company installed a field access of concrete squares that followed the contour of the deep ditch. This system didn't allow farm trucks to drive into the field for harvest.

In 2016, after he complained, he said the company orally agreed to build an adequate field approach. A year later, they said they would only build it if he absolved them from any associated field damage.



Landowner Clyde Eisenbeis on June 3, 2021, walks where North American Coal dug a diversion ditch along his field near Beulah, North Dakota. in 2012. The coal company claims his mother, since deceased, had requested the project, and that the company hired it dug to be a “good neighbor.” Eisenbeis’ mother had Alzheimer’s. The company agreed to build a field approach, but only if Clyde would sign away any further responsibility for the company. Photo taken June 3, 2021, near Beulah, N.D. Mikkel Pates / Agweek

Eisenbeis blames the North Dakota Public Service Commission for not protecting him from financial harm from NAC actions he said were clearly used for coal mining. North Dakota PSC Commissioner Randy Christmann said his staff has spent “hundreds of hours” trying to sort it out but said Eisenbeis needs to file a formal complaint. Eisenbeis said a commissioner suggested he hire a lawyer. Eisenbeis created his own website to document the case, at [https://beulah.foxping.com\(https://beulah.foxping.com/\)](https://beulah.foxping.com(https://beulah.foxping.com/)) .

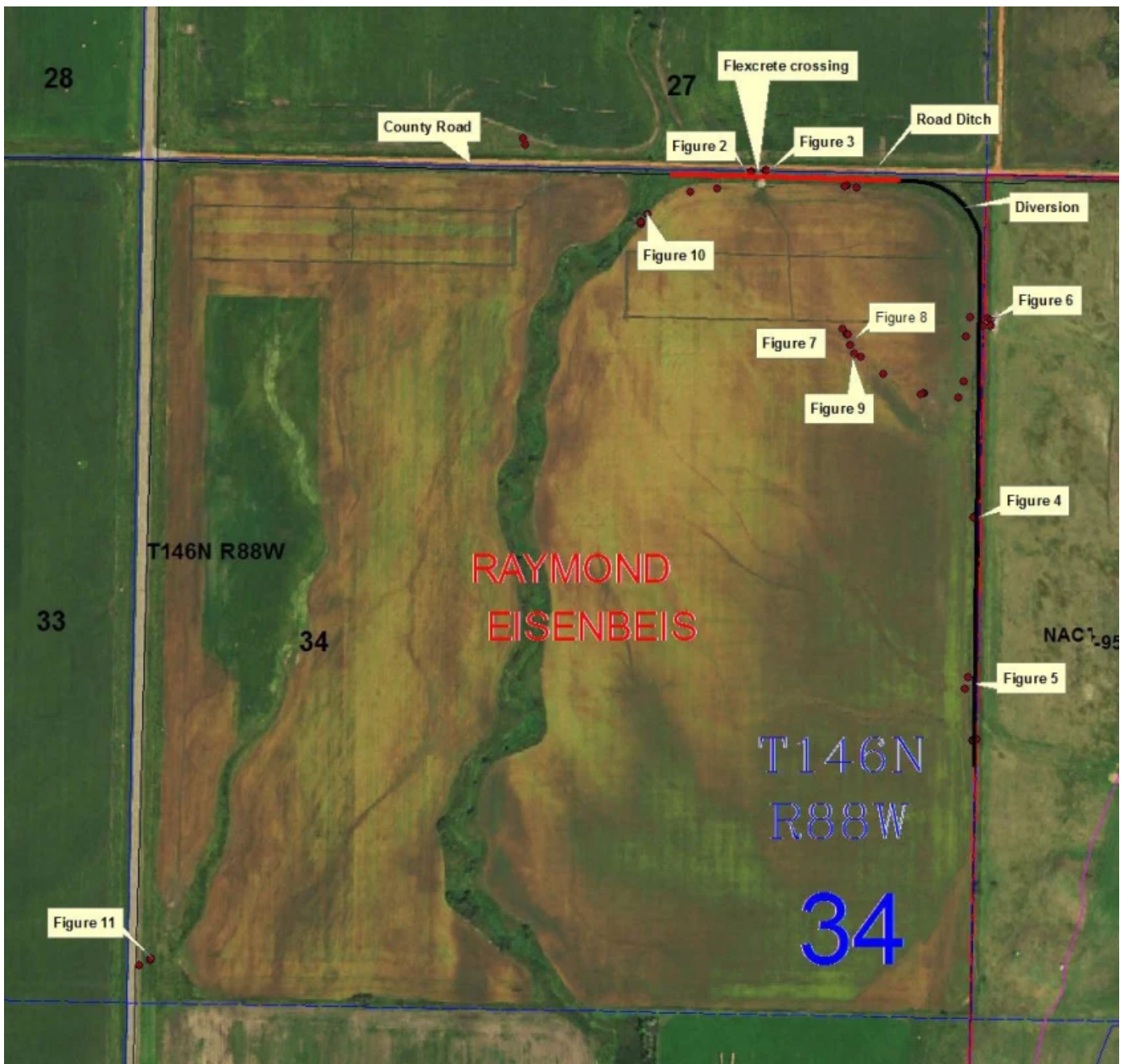
The ‘good neighbor’

Eisenbeis, 72, grew up at Beulah but now has retired to Bismarck after a career in electrical engineering. He is the eldest child of Ray and Esther Eisenbeis, who inherited a 160-acre parcel in the 1960s.

Ray and Esther farmed briefly in the early 1950s but lived in Beulah, where Ray was a residential electrician. Clyde worked in electronic design engineering for several large companies in Texas, Minnesota and Iowa, until he retired in 2014.

In 2000, his mother, Esther Eisenbeis, was diagnosed with Alzheimer's disease. Clyde was given power-of-attorney. Ray died in September 2011, at 88. Esther died in June 2016.

North American Coal operated a surface coal mine uphill from the Eisenbeis land.



A map overview of the Eisenbeis quarter-section shows the diversion placed at the right (east) and turning to the west on the north side of the parcel. Provided by Clyde Eisenbeis

In 2008, the Public Service Commission, which regulates coal mining, took photos of the Eisenbeis property. Coal digging creates water which initially is held in sedimentation ponds. The company was routing some of the discharge from their ponds around the Eisenbeis field through a high-density polyethylene pipe.



Clyde Eisenbeis, now of Bismarck, North Dakota, said this North Dakota Public Service Commission photo shows the field edge of his family's land near Beulah, North Dakota, before North American Coal dug a drainage ditch in it. Photo taken March 6, 2008, near Beulah, North Dakota. North Dakota Public Service Commission

In later documents, NAC said Clyde's cousin Wayne Eisenbeis and Clyde's mother Esther had asked the coal company to redesign and reconstruct the diversion, complaining about sedimentation and farmland flooding. Wayne rented the quarter from Ray and Esther and farmed it on a share deal.

Water flows from the NAC land onto the east side of the Eisenbeis field. It follows around to the north of the parcel, and westward into a creek that discharges water a mile north into Beaver Creek Bay of Lake Sakakawea.



In 2012, North American Coal installed a drainage diversion — “in the interest of being a good neighbor” — at what the company says was the request of then-farmland renter Wayne Eisenbeis and the landowner, Wayne's aunt Esther Eisenbeis. Esther had been diagnosed with Alzheimer's in 2000. Photo taken Oct. 8, 2008, near Beulah, North Dakota. North Dakota Public Service Commission

Clyde said there was so much water from the road ditch that it caused water to flow uphill to the south, flooding on the southwest corner of his land.

Sarah J. Flath, environmental manager for The Coteau Properties Company, which cares for land associated with the mine, in documents said the diversion was in “poor condition” and had “silted in areas and blown out in others.” She noted that flows “during mining and following mining are less than the flows which occurred pre-mining.” Flath did not return a phone message from Agweek for comment.



A 2008 photo by the North Dakota Public Service Commission shows the edge of the field in rural Beulah, North Dakota, then owned by Ray and Esther Eisenbeis, now owned by their children, including Clyde Eisenbeis, Bismarck, North Dakota. Photo taken March 6, 2008,, near Beulah, North Dakota. North Dakota Public Service Commission

In other documents, NAC officials said Esther “agreed with Wayne Eisenbeis’ request” for diversion improvement. They said Esther’s son, Clyde, became “involved in the design and location of the proposed improved diversion.” Clyde denies that.

Clyde said the first he heard about it was November 2011, when NAC officials phoned him in Marshalltown, Iowa. He told them to build the ditch on their side of the field border. But he says on Nov 15, 2011, Bill Kirk, an engineer for NAC, told Clyde it was hard to go on their side of the border because of five electric power poles.

On Nov. 29, 2011, Clyde said he told the company they would need to repair erosion damage to his mother's farmland.

Clyde said the company had to know Esther couldn't give permission. "If they didn't know she had Alzheimer's, why did they call me?" he said.

In the spring of 2012, the company dug the ditch on the east side of the Eisenbeis land and a diversion road ditch on a gravel county road on the north. The company said they hired the contractor, but did the work "at the request of Esther Eisenbeis and her renter" for no charge, "in the interest of being a good neighbor."

The realization

In October 2015, Clyde retired in Iowa and moved to Bismarck.

He visited the property and was shocked that the road ditch was "so deep it was hard for a farmer to get across with their equipment."

"What they never told me was that they were deepening the road ditch, blocking access to (the field) and didn't tell me they were dumping pond water into the creek," he said.

Clyde Eisenbeis, now of Bismarck, North Dakota, in 2011 told North American Coal that if they wanted to dig a diversion at family land near Beulah, North Dakota, they should put it on their land (left of the sign) and not the land of his mother, Esther. They dug it on Eisenbeis land. Photo taken June 3, 2021, near Beulah, North Dakota. Mikkel Pates / Agweek

The creek had flooded. He contends the southwest corner of his land — about 20 acres — was flooded.

“We lost farmland,” he said.

Clyde’s cousin, Wayne, told Agweek he’d gotten stuck in the muck all of the time in the southwest part of the field. Neighbors had land flooding and water table problems but declined to be interviewed because of unrelated associations with the coal mines.



North American Coal dug a road ditch drainage and installed a field approach, made of concrete squares, that followed the ditch contours. The approach is too steep for loaded harvest trucks, among other things. The company later agreed to put in a larger approach, but only if landowner Clyde Eisenbeis would hold them harmless. Photo taken April 26, 2018, near Beulah, North Dakota. Photo courtesy Clyde Eisenbeis

NAC initially installed a field approach from the concrete squares. “You can drive a team of horses across it but you’re not going to drive a truck,” Clyde said.

Wayne controlled a parcel just to the south of the field. It isn’t clear whether he gained access from the south.

With Ray and Esther out of the picture, Wayne in 2016 declined to rent the land again, in part because he said he expected difficulties with Clyde.

'No approach'

In April 2016, Clyde was looking for a new farmer-renter. One set of renters from Glen Ullin, North Dakota, passed on it “because there is no approach.”

Farmers Jayme and Jerome Boeshans (BASE-hans) told Clyde they’d rent it but didn’t like using a field where they would have to drive a cart through a ditch every time they wanted to unload into a truck.



A 160-acre Eisenbeis family parcel (right, to the south) is at the right of a Mercer County gravel road that heads uphill eastward to strip mining areas of North American Coal. The company dug a diversion ditch and a road ditch in 2012. Photo taken June 3, 2021, near Beulah, North Dakota. Mikkel Pates / Agweek

On April 13, 2016, the Boeshans met with Clyde and NAC employees — Bill Kirk and Jerry Becker — at the site. The coal officials had marked out a location where they’d build an approach. All agreed it would be ample — roughly 100 feet wide. They would install two culverts.

“I said, ‘Good, let’s go with it,’” Clyde said.

But they didn't go ahead.



Coal mining machines dig to the south of a quarter of land in the foreground that is owned by the adult children of Ray and Esther Eisenbeis in rural Beulah, North Dakota. Photo taken June 3, 2021, near Beulah, North Dakota. Mikkel Pates / Agweek

On July 29, 2016, he said he asked NAC officials why they hadn't done the work. He said one told him it had been "too wet," which he thought was "absurd" because farmers were planting. Months passed.

In October 2016, Clyde approached the Public Service Commission, which regulates coal mining issues. He said Guy Welch, a PSC environmental scientist, told him they would look at it in the spring of 2017.

On April 28, 2017, Welch informed Clyde he needed to provide a written authorization to the company. Clyde sent a letter to Brad Erickson, assistant land manager for The Coteau Properties Company, a subsidiary of NAC, who designed the approach to "substantiate" the oral authorization into writing.

On May 19, 2017, the coal company sent a letter saying that before they would do the work, they needed him to sign a contract, promising there would be no liability to NAC for damage to the farmland.



Clyde Eisenbeis of Bismarck, North Dakota, in June 2021 shows where North American Coal officials in 2018 marked a new field approach on this family's farmland near Beulah, North Dakota. He agreed when they orally offered to build for free, but balked when they later asked him to sign away any future responsibility for the company. Photo taken June 3, 2021, near Beulah, North Dakota. Mikkel Pates / Agweek

Erickson on Sept. 22, 2017, sent Clyde a revised agreement, offering an approach, with conditions. Under an agreement, Clyde would have to agree the company would not be “responsible for any maintenance, repair or modification.” He would have to “agree to fully indemnify and hold harmless Coteau against any and all claims, losses, expenses, actions, causes of actions and liability of whatsoever kind or nature arising from the use or existence of said approach and diversion.”

The offer was good until Oct. 23, 2017.

Clyde said he couldn't agree to anything that open-ended.

Not our issue

On May 15, 2019, Clyde filed a complaint with the PSC. Clyde could come to the PSC hearing but they deemed it an "informal" complaint and said he could speak only if he filed a formal complaint.

In its regular PSC meeting on June 12, 2019, commissioners seemed to agree with the coal company and said it was not coal mining related. Among other things, PSC "modeling" showed the water table may have come from rainfall. The coal company said its water was being dumped "far away" from the flooded southwest corner of the property. Clyde objected that he was not allowed to speak at the meeting. One of the commissioners advised him to file a formal complaint and hire a lawyer.

Clyde contacted the North Dakota Ethics Commission, complaining about his treatment by the PSC. The North Dakota Attorney General's office responded, saying it was not in their jurisdiction. He said he thinks the state or county should provide the attorney to defend the public against an improper ditch and the blocking of his farmland.

Clyde said he has had no other disputes with public officials across the years. No lawsuits. No court battles. He's put "hundreds" of hours into the effort, using his formidable engineering and documentation skills.

To no avail.

He acknowledges he doesn't know how much it would cost to build an adequate crossing.

"Lots of money," he said, adding, "I don't want to use retirement savings to pay for an approach. I want North American Coal to put the

approach in. It should not cost me any money. I didn't do anything wrong? Why should I put in an approach?"

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