

ROSEBUD CONSERVATION DISTRICT MEETING MINUTES  
January 23, 2008~7 pm  
USDA Service Center, 270 S. Prospect, Forsyth, MT 59327

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**Supervisors present:** Doug McRae, Wendy Warren, Dave Davenport and Steve Lackman attended the meeting. Jim Rogers and Don Youngbauer were absent.

**Others present:** Keith Kerbel, Dennis Kenney, Rocky Schwagler, Laurie Kelley and Bobbi Vannattan.

**7:00 pm:**

**Guest Speaker:** Keith Kerbel, DNRC, attended the meeting to answer questions about the water adjudication process.

Can you take water from one place of use and use it in another? Yes, but you have to apply through the DNRC to change the water right and you are tied to historical use.

What about tribal water? The tribe has up to 20,000 acre feet of water that they can contract out to an individual. The tribe is part of the equation, as far as water delivery is concerned. Part of the water released is Northern Cheyenne water and they are paid by the people who have opted to buy it from them.

Can water be marketed and sent out of state? Keith said the statute says no. There are two different levels of water rights, at the first level of proof if you are under a certain limit you just have to be reasonable or under 4,000 acre/feet. Anything that appears speculative is kicked out.

If you request more water than that you have to have clear and convincing evidence that it's necessary. There is a much higher level of proof required at this point. The proof must be "beyond a shadow of a doubt".

Fidelity's applications were for water marketing, specifically, so that they could sell the water. The water rights are junior so if someone's well goes dry they can complain and Fidelity's rights will be shut off. They have to offer mitigation agreements to producers within one mile of development, but they don't have to have them in hand.

What about artesian wells that lose their head, but still have water in them? Most of these are located in areas without access to power. The mitigation agreement says they have to restore the water in one way or another. If there's an adverse effect, they have to increase the area of impact to 2 miles. John Wheaton has been doing a lot of water monitoring, which is really helpful and will save a lot of people a lot of problems.

How does sub-irrigation work into water rights? It doesn't. In order to have a water right in Montana you have to have a point of diversion.

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If you aren't using your water right do you lose it? It depends on the length of time and the reason. If they've filed a water right, they have a right to use the water. The Bureau of Reclamation (BOR) and Bureau of Indian Affairs (BIA) have been objecting to a lot of unused water rights on the Yellowstone and the Tongue Rivers. A Prima Fascia claim is valid until it is proven untrue or undocumented. This has to happen through the objection process. BOR, BIA or private landowners can object to the claims.

How does the adjudication process work?

- They take all the claims on Rosebud Creek and the tributaries.
- They have rules given to them by the MT Supreme Court.
- The rules tell them how to examine the claims.
- They examine what the use is. They have certain rules to follow for each type of use.
- A report goes to the water courts.
- The water court reviews the reports to see if there are any inconsistencies.
- They become familiar with the claims so they are prepared when they issue the decree.
- The decree has every claim on there according to priority date.
- Announcements are put in the newspaper and sent to the appropriate offices. There is a six month period to respond.
- They try to contact all people affected before the decree is official.
- The individual landowner needs to look at their rights and their neighbor's water rights to see that they are correct.
- Once the time has passed, all of the objections are given to the water master who sets up hearings with all the objectors.
- The water master tries to meet and resolve the objections. Sometimes attorneys are needed.
- Objections can be legal descriptions, points of diversion, or other incorrect information.
- All of their info comes off of aerial photos.
- Conference calls are made and each objection is thoroughly reviewed.
- BIA and BOR try to work it out without the water masters, so they mediate if they can.
- If a water right claim has been filed it is prima fascia. But if you know that water has been available and the landowner hasn't used it for ten or more years, you can file an objection for abandonment; then you have to argue it in front of the water master.
- The county water resource survey indicates when an area was irrigated.

ROSEBUD CONSERVATION DISTRICT MEETING MINUTES  
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- Aerial photos are used to determine if the landowner had been irrigating before 1973.

If someone switches from flood to sprinkler and only uses half the previous amount of water, can he use the water for something else? Yes, and then he can switch back later if he wants to.

Can they put the water somewhere else? No, it's acre for acre. But they can come in and talk to DNRC, then file a temporary change with FWP, to leave the water in the river for fish and wildlife. The temporary change is good for ten years and can be renewed.

Keith told the group that by February of this year there will be a big raise in the cost of permits. They haven't been raised in about 30 years.

Keith told the group when you get a letter or call from the DNRC about your water, be sure to respond in a timely manner. Once it's in the decree it will be very hard to change and you will most likely need an attorney.

**Regular Meeting:**

**Meeting Minutes:** Dave made a motion to approve the minutes of the November 28, 2007 meeting minutes and Wendy seconded. The motion carried.

**Treasurer's Report:** Wendy made a motion to approve the January 2008 treasurer's report and Dave seconded. The motion carried.

**Administrator's Report:** There were no questions.

**Outreach & Education Coordinator's Report:** Steve made a motion to donate \$250 to the speech and drama club and Wendy seconded the motion. The motion carried. Bobbi asked if the district would the district to donate trees to the local schools for Arbor Day; the board declined to make a decision.

**Meeting Schedule:** The next regular meeting will be held on February 27.

**Loans:**

Justin and Cassandra Schwend submitted a loan application for \$15,000 for stock water development. They offered a first mortgage on 640 acres of rangeland which is valued at \$48,000. Dave was concerned that they weren't asking for enough money to fund the project. Rocky stated that they are getting EQIP money and are asking to borrow 25% of the project cost. Steve made a motion to approve the loan for \$15,000, and

ROSEBUD CONSERVATION DISTRICT MEETING MINUTES  
January 23, 2008~7 pm  
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if they wish to borrow more they be allowed to do so. Wendy seconded the motion and it carried.

Byron Newman submitted a loan application for \$36,000 for irrigation reorganization (pivot). They offered a second mortgage on 13 acres of rangeland, 53.1 acres of irrigated cropland and 3 acres of dry cropland for a total value of \$99,380. Steve made a motion to approve the loan and Wendy seconded it and the motion carried.

310's:

07-10—Annual Maintenance: Arlene Ham submitted a 310 application for annual maintenance to be done on the Yellowstone River near Hathaway. The purpose of the project is to protect an irrigation pump site. The project will disturb 30 to 40 feet of riverbank and the cleanout will extend approximately 20 feet into the river. Fish Wildlife and Parks signed off on the project. Dave made a motion to approve annual maintenance permit application #07-10, Steve seconded and the motion carried.

07-11—Annual Maintenance: Arlene Ham submitted a 310 application for annual maintenance to be done on the Yellowstone River near Hathaway. The purpose of the project is to protect and irrigation pump site. They will impact 50 to 60 foot of river bank and the cleanout will extend 30 to 35 feet out into the river. Fish Wildlife and Parks signed off on the project. Dave made a motion to approve annual maintenance permit application #07-11, Steve seconded and the motion carried.

Annual Plan Items:

January:

Reserved Water:

- Work to ensure one water reservation per year is developed. (Wendy Warren, Steve Lackman) One was developed last year and another is in the works.
- Support the YRCDC by attending meetings and providing input on possible projects (Don Youngbauer). Don is currently chair of the YRCDC.

Water Conservation, Development and Management:

- Inform producers of the availability of no-interest loans for conservation practices. (RCD Board, Laurie Kelley &

ROSEBUD CONSERVATION DISTRICT MEETING MINUTES  
January 23, 2008~7 pm  
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Bobbi Vannattan) The newsletter and website are used to advertise the loans. The brochures and applications are available online and in the office.

Water Quality:

- Educate people about AFO/CAFO rules and regulations. (RCD Board, Bobbi Vannattan, Laurie Kelley) The AFO/CAFO resolution was passed at the 2006 convention and MACD has met with state officials to discuss the subject.
- Continue to work on conservation plans for land use ordinance that will provide protection and conservation for Rosebud Conservation District's soil and water while producing Coal Bed Methane for the nation. (Jim Rogers, RCD Board, Laurie Kelley) Conservation plans are available to the public as are numerous books and pamphlets on the subject.
- Continue monitoring the water within Rosebud Conservation District. (RCD Board, Laurie Kelley, Bobbi Vannattan) The Rosebud Watershed Group discussed their monitoring plan at the 1-16-08 meeting. The group will be working with the EPA to ensure that the proper protocol is being followed.

Soil Erosion:

- Promote educational programs on such practices and no-till and minimum till in the newsletter and on the website. (RCD Board, Dave Davenport, Laurie Kelley, Bobbi Vannattan) Articles have been run in the newsletter during the year, promoting the use of no till and minimum till. Links are on the website as well.
- Refuse to sign conservation plans under soil classification of 6 or greater. (RCD Board) None have been signed.
- Provide technical and organizational support to the Rosebud Watershed Group and encourage other groups to form. (Dave Davenport, Doug McRae, Jim Rogers, RCD Board, Laurie Kelley) The effort continues.
- Continue to support the YRCDC. (Don Youngbauer, Laurie Kelley) Don continues as chair of the council and Laurie helps out when needed at the meetings and events.

ROSEBUD CONSERVATION DISTRICT MEETING MINUTES  
January 23, 2008~7 pm  
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- Administer the Natural Streambed and Land Preservation Act (310 Law). (RCD Board, Laurie Kelley) Eleven 310 permits were submitted and reviewed in 2007.
- Promote grazing practices that ensure wind, water and streambank erosion are reduced. (RCD Board, Dave Davenport) The Rosebud Range Committee has been reformed and will be holding a workshop/tour sometime in 2008.
- Promote the District's no-interest loan program for range management practices. (Doug McRae, Dave Davenport, RCD Board, Laurie Kelley) The loan brochure encourages this practice.
- Provide information on the Grazing Land Initiative Conservation Program. (Doug McRae, RCD Board) The information is available in the office.
- Continue to work with and support the Rosebud County Range Committee. (Doug McRae, RCD Board, Laurie Kelley) The committee has reformed.
- Provide information to producers on range management techniques. (Doug McRae, Don Youngbauer, RCD Board, Laurie Kelley) This will be provided at the range tour.

Noxious Weed Control:

- Assist, when possible, in funding projects which control the spread of noxious weeds. (RCD Board) The district continues to help fund the Rosebud Watershed Group and Tongue River Watershed Alliance. Both groups have defined weeds as an ongoing concern. The fair booth this year will feature noxious weed education.
- Support and cooperate in weed education efforts with other agencies. (RCD Board, Laurie Kelley, Bobbi Vannattan) The district works in cooperation with the watershed groups and the weed district.
- Support high school weed project. (RCD Board, Dave Davenport, Don Youngbauer)

Conservation Education and Awareness:

- Develop a website and update it in a timely manner, on matters or issues of concern. (RCD Board, Laurie Kelley) Website is updated on a regular basis.
- Coordinate the annual Conservation Day activities with area schools and agencies. (RCD Board, Doug McRae,

ROSEBUD CONSERVATION DISTRICT MEETING MINUTES  
January 23, 2008~7 pm  
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Laurie Kelley, Bobbi Vannattan) The schools have already been contacted and presenters are being lined up.

- Publish quarterly newsletters with conservation news geared toward producers, students and the general public. (RCD Board, Laurie Kelley) The newsletter goes out on a quarterly basis.

District Management:

- Support the MACD Employees Association. (Don Youngbauer, RCD Board) Laurie was elected secretary of the organization.
- Ensure that employees are aware of procedures outlined in the District Personnel Policy. (Wendy Warren, RCD Board) Employees are required to read the policy prior to employment.
- Conduct employee evaluations on anniversary dates, or as otherwise defined, and review employee job descriptions. (RCD Board) Evaluations are done in June for both employees.
- Ensure Outreach & Education Coordinator receives training to meet and surpass requirements of the position. (RCD Board, Wendy Warren, Laurie Kelley) Coordinator has gone to several trainings covering many different facets of her position.
- Provide necessary training sessions for the Administrator, through alternative organizations. (Wendy Warren, RCD Board) Administrator has attended several different trainings and workshops.
- Review mission statement. (Steve Lackman, RCD Board) Will be done at the same time annual plan is reviewed.
- Develop annual plan which ensures the objectives and goals of the strategic plan are met during the stated time frame. (RCD Board) The plan will be reviewed at the February meeting.
- Periodically review programs and procedures. (Laurie Kelley, RCD Board) This is an ongoing process.
- Assure annual status reviews are performed on all projects under loan program. (Laurie Kelley, Bobbi Vannattan, RCD Board) This is an ongoing process.

Inter-agency Cooperation:

- On a rotating basis, review all Memorandums of Understanding and update when necessary. (NRCS, FSA,

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BIA, Extension). (RCD Board, Laurie Kelley) NRCS MOA was discussed during the 2007 year.

- **Solicit input from NRCS on the annual plan.** (Dave Davenport, Laurie Kelley) Rocky attends all meetings and his input is encouraged and incorporated into the annual plan.

**February:** There are no annual plan items for February.

**Reserved Water:** According to Duane Claypool, DNRC, they are still waiting for information from Prince.

**OLD BUSINESS:**

*9:00 pm:*

**Rosebud Watershed Group:** A meeting and election for "at large" directors was held on January 16. Elected to the four positions were Lance Ashley, Doug McRae, Donny Bailey and John Bailey. Their terms begin immediately. In other business the group decided to hold another Know Your Watershed Tour and a committee was formed to plan the event. The committee will consist of Laurie Kelley, Bobbi Vannattan, Gordon Criswell, Scott Egan and Amy Krueger. Another committee was formed to look into funding opportunities. Laurie Kelley, Bobbi Vannattan, Lance Ashley, Dave Davenport and Doug McRae volunteered to be on that committee.

**YRCDC:** Don was unable to attend the meeting, but asked that Laurie suggest the board look into potential projects along the Yellowstone River. There is funding available.

**Range Committee:** The next meeting will be held on February 6.

**Small Acreage Workshop:** The board discussed holding a workshop and decided against it because they did not think it would be well attended. They decided, instead, to put together guidelines to hand out to potential developers. Laurie will talk to other CD's that have guidelines and get their assistance in developing a workable set.

**Annual Banquet:** The banquet will be held on Sunday February 24. The Forsyth Speech and Drama Club will provide the entertainment. The event will be held at the Joseph Café, starting at 5 pm. Laurie and Bobbi have things well underway.

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January 23, 2008~7 pm  
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---

9:30 pm:

**NRCS Report:** NRCS personnel are busy with EQIP contracts. There are 19 new contracts between Rosebud and Treasure Counties for a total of \$800,000 to \$900,000. Forsyth and Colstrip schools are interested in producing stock-water tank wildlife ramps for the district. Rocky will have an estimate of the number needed, probably around 20 or 30.

**NEW BUSINESS:**

9:45 pm:

**Elections:** Three board members are up for re-election this year; Don Youngbauer, Steve Lackman and Wendy Warren. Wendy will not be running again and Steve will ask Leif if he will run in her stead. Laurie will put up signs in the office and the board will do some recruiting. The proper paperwork needs to be in to the clerk and recorder between January 22 and March 20, 2008.

**Open Mike Board Members:** Dave mentioned that Don Bailey has concerns that the drilling on the Mars place is in Rosebud County. Laurie will send a copy of the land use ordinance to Pinnacle via certified mail and include a letter outlining their responsibilities.

Dave gave Laurie a letter to send to Mark Roundstone.

**Public Comment:** There was no public comment.

**Future agenda items:** No future agenda items were suggested.

10:00 pm: Adjourn