

Conservation District's Coal Bed Methane Protection Act Committee Meeting Minutes

March 17, 2008—Forsyth Country Club—1:00 pm

Attendees: Jim Rogers, Rosebud Conservation District (RCD), Laurie Kelley, RCD, Carol Watts, Custer County Conservation District (CCCD), Jim Finneman, CCCD, Gloria Menke, Big Horn Conservation District (BHCD), Jerry Lunde, BHCD, John Wheaton, Montana Bureau of Mines and Geology (MBMG), Liddy Brinck, MBMG, Steve Schmitz, Department of Natural Resources and Conservation (DNRC), Bob Petermann, Wibaux Conservation District (WCD), Roger Hybner, Natural Resources and Conservation Service (NRCS), Penny Landon, Carbon Conservation District (CCD), Rachel Takala, Garfield Conservation District and Scott Kaiser, DNRC, attended the meeting. A quorum was present.

Welcome: Jim Rogers, Rosebud Conservation District (RCD) supervisor and Conservation District's Coal Bed Methane Protection Act Committee (CDCBMPAC) chair welcomed the attendees and outlined their mission for the upcoming year.

Previous Meeting Minutes: Jerry Lunde made a motion to approve the minutes of the last meeting (June 26, 2006) and Jim Finneman seconded. The motion carried.

Summary of previous Coal Bed Methane Protection Act Meetings:

Jim Rogers: Jim explained that the committee had put together a plan for guidelines of the emergency loss of water portion of the Coal Bed Methane Protection Act (CBMPA) in 2006. The guidelines had been approved by the Department of Natural Resources and Conservation (DNRC) in early 2007. Now we need to begin working on guidelines for the second and more complex portion of the guidelines, which goes into effect in 2011. The first task we need to complete is to set up a timeline for completion.

Steve Schmitz: Steve told the group that if there were any statutory changes that needed to be made to the act, the group would need to move on it as soon as possible. It may be that we need to revisit the dollar amount of the awards, which will require legislative action. He also asked the group if they were willing to be the sounding board for the DNRC when other districts are confronted with potential Coal bed methane development in their districts.

Brief summary of the status of CBM development in each district:

Custer: There is no active drilling in Custer County at this time.

Garfield: There are a couple of mystery wells, but they are most likely exploratory.

Rosebud: Fourteen deep gas wells have been drilled. They are exploratory and not currently producing. One CBM well has been drilled by Pinnacle Gas in an effort to hold onto their leases. It was drilled on the Diamond Cross Ranch.

There will probably be a few others drilled in order to hold onto the mineral leases but there are no plans to produce at this time.

Wibaux: A few wells have been drilled, but none of them were for CBM, they are all crude oil and natural gas so far.

Big Horn: CX field is in production and has been for quite some time. They have done some core holes further north but currently there is no production to the north of the CX. West of the CX, they have done some exploring but they are having a difficult time working with the tribe so it is not going anywhere right now. There have been no requests for emergency funds because the CX is owned by the drilling company and they have replaced any failed wells themselves. So far, there have been six or eight new wells drilled.

Steve Schmitz: Is replacing wells part of their permit?

Jerry Lunde: It may be, but they may be doing it as a courtesy.

John Wheaton: It is part of the surface mitigation agreement that they must offer to replace their water, but the landowner does not have to agree to it. Fidelity told him that they had replaced 26 or 27 wells, but that may have been in both Montana and Wyoming.

Steve Schmitz: Is that information reported?

John Wheaton: No, it is not, but it would be good public relations if it were.

John Wheaton brought out a map that showed where drilling was currently occurring. He offered to put together a report of applications and permits to drill by county and bring it to the next meeting. It will then be handed out and posted on the Rosebud Conservation District website.

Jim Rogers reported that the level of CBM activity varies throughout the state, but we only have people from this part of the state attending the meetings. Perhaps the Montana Association of Conservation Districts (MACD) could be utilized to encourage a wider audience.

Status of the current CBMPA budget (Steve Schmitz): Steve told the group that approximately \$4,000,000 has been budgeted for water compensation. He also told the committee that he had added language to the annual CBM grants to include money for travel, wages, and a pro-rated portion any financial audits that become necessary due to payouts from DNRC for emergency loss of water.

Group discussion of items to be accomplished in the future:

Public outreach and education: Steve Schmitz has begun working on a brochure that will explain the emergency loss of water compensation guidelines and outline what needs to be done to qualify for assistance. Laurie Kelley and Steve will work on the project together and printing costs will be paid out of the CBMPA funds.

John Wheaton: Baseline data and documentation is very important. He is working with Big Horn CD on an RDGP grant to give the landowners instrumentation and education to measure their wells. You need documentation so that you can show a trend. Could the CBMPA money be used to get the baseline data?

Jim Rogers: It would be more likely that the CBMPA would pay for the process for getting a baseline. A loss (for the 2011 portion of the act) could be loss of aesthetic value, so it is not going to be a simple process to determine these guidelines. We should request the formation of a Technical Advisory Committee. We want it to be made up of people that will remain long after we have gone. Have people join it that want to be on it so it lasts.

Steve Schmitz: Money from the administration fees could be used to pay expenses, but if the members are state or federal employees, they won't need to be compensated.

Jim Rogers: Laurie Kelley and I will write a letter to MSU-Water Extension, NRCS and Montana Bureau of Mines and Geology asking for one member from each group to join a TAC. Their duty will be to make recommendations on how we determine damages from CBM development. We will also contact Steve Bullock to see if he would like to continue operating as our legal representative.

Gloria Menke: Do we need a definition section to alleviate confusion over the terminology used? Steve Schmitz and Gloria will work on a definition section.

Approach and work plan for 2011 program procedures: The law states:

76-15-905. Coal bed methane protection program -- restrictions. (1) There is a coal bed methane protection program administered by conservation districts that have coal beds within the exterior boundary of the district or whose water sources may be adversely affected by the extraction of coal bed methane. The purpose of the coal bed methane protection program is to compensate private landowners or water right holders for damage caused by coal bed methane development.

(2) A conservation district shall establish procedures, approved by the department, for evaluating claims for compensation submitted by a landowner or water right holder. The procedures must include:

(a) a method for submitting an application for compensation for damages caused by coal bed methane development;

(b) a process for determining the cost of the damage to land, surface water, or ground water, if any, caused by coal bed methane development;

(c) the development of eligibility requirements for receiving compensation that include an applicant's access to existing sources of state funding, including state-mandated payments, that compensate for damages; and

(d) criteria for ranking applications related to available resources.

(3) An eligible recipient for compensation includes private landowners and water right holders who can demonstrate as the result of damage caused by coal bed methane development:

(a) a loss of agricultural production or a loss in the value of land;

(b) a reduction in the quantity or quality of water available from a surface water or ground water source that affects the beneficial use of water; or

(c) the contamination of surface water or ground water that prevents its beneficial use.

(4) (a) Subject to the conditions of subsections (5) through (8), an eligible landowner may be compensated for the damages incurred by the landowner for loss of agricultural production and income, lost land value, and lost value of improvements caused by coal bed methane development. A payment made under this subsection (4)(a) may only cover land directly affected by coal bed methane development.

(b) Subject to the conditions of subsections (5) through (8), an eligible water right holder may be compensated for damages caused by the contamination, diminution, or interruption of surface water or ground water.

(5) In order to qualify for a payment of damages under this section, the landowner or water right holder shall demonstrate that it is unlikely that compensation will be made by the coal bed methane developer or operator who is liable for the damage to land or the reduction in or contamination of surface water or ground water as the result of coal bed methane development.

(6) Compensation made to a landowner or a water right holder under this section may not exceed 75% of the cost of the damages. The maximum amount paid to a landowner or water right holder may not exceed \$50,000.

(7) Conservation district administrative expenses for services provided under this section are eligible costs for reimbursement from the coal bed methane protection account.

(8) (a) Except as provided in subsection (8)(b), compensation for damages allowed under this section may be made only after June 30, 2011.

(b) Compensation for an emergency may be made after June 30, 2005.

History: En. Sec. 5, Ch. 531, L. 2001.

In order for the guidelines to be in place by June 30, 2011, the group put together a tentative timeline:

CBMPA Timeline:

2008

June: Technical Advisory Committee formed

Aug: Damage Determination

2009

March: Eligibility

June: Criteria Ranking

September: Application

2010

March: ranking

June: final guidelines finished and sent out to districts for approval
September: submit to DNRC for approval

2009 Legislature: Steve submitted a budget of \$1,000,000 for damages and \$100,000 for administration per year for 2007 and 2008 and they are already looking at the budget for the next biennium. Currently Rosebud CD has a grant for \$10,000 for CBMPA expenses and the other districts were awarded \$6,000 each. It is hard to justify asking for more right now.

Next meeting: The next meeting will be held on September 8. The length of the meeting will depend upon the objectives to be accomplished.

Public Comment: There was no public comment.

Action Items:

Laurie Kelley and Steve Schmitz will work on an educational brochure.

Laurie Kelley and Jim Rogers will contact MACD to ask for their help in getting the word out to districts across the state.

Gloria Menke and Steve Schmitz will work on definitions for the guidelines.

Carol Watts and Jim Finneman will look at the original application form and see how it can be adapted.

Jim Rogers will contact Steve Bullock about representing the group.

Jim Rogers and Laurie Kelley will contact MSU-Water Extension, NRCS and MBMG about providing us with technical support.