

Coal Bed Methane Protection Act

Conservation District Working Meeting For Establishment of Funding Application Guidelines

March 20, 2006
Forsyth Country Club

Welcome and introductions:

Jim Rogers, Rosebud Conservation District (RCD) vice Chair, opened the meeting and introductions were made. Attendees were Mike Gates, Treasure County Conservation District (TCCD), Glenn Gay, Powder River Conservation District (PRCD), Floyd Huckins, PRCD, Gene Smith, PRCD, Senator Keith Bales, Jerry Lunde, Big Horn Conservation District (BHCD), Jim Finneman, Custer County Conservation District (CCCD), Carol Watts, CCCD, Laurie Kelley, (RCD), Larry Fox, (RCD), Penny Landon, Carbon Conservation District (CCD), Kay Petermann, Wibaux, Bob Petermann, Wibaux Conservation District (WCD), Lynn Haidle, Prairie County Conservation District (PCCD), Steve Schmitz, DNRC, John Wheaton, Montana Bureau of Mines and Geology (MBMG), Steve Merritt, Montana Association of Conservation District (MACD) and Luther Waterland, Carter Conservation District (Carter CD). Jim briefly outlined the group's prior actions.

Organization of the Conservation District's Coal Bed Methane Protection Act Committee:

Purpose:

- To establish procedures for evaluating claims for compensation submitted by private a landowner or water right holder.
- To provide information sharing as the CBM protection act is used in conservation districts.
- To conduct business as needed for the conservation districts that relates to the CBM protection act.
- To seek legislative action as needed.
- To provide for outreach to educate CDs and the public about assistance available from the CBM Protection Act.

Meeting Dates:

- Committee will meet twice a year as necessary to carry out its purpose.
- Committee can be called to meeting by chairman as needed.

Committee Makeup:

- Committee will be made up of one voting representative from each conservation district that deems itself affected by Coal Bed Methane. Conservation districts may send more than one representative to the committee meetings; however, only one vote per CD is allowed.

Quorum:

- No business may be conducted by the committee unless 50% of the affected conservation districts are present.
- A simple majority vote will pass any issue brought to a vote.

Officers:

- Chairman - election in March
- Secretary - election in March

Jim Rogers, RCD, was chosen to chair the committee.

Participating districts, to date, are Carbon, Carter, Custer, Big Horn, Powder River, Prairie, Rosebud, Sheridan, Valley and Wibaux. Treasure CD attended the meeting but had not yet determined if they were going to participate. Several other CD's are still undecided.

Review and Comment on the Draft Model Procedures:

Steve said that he has sent the draft model procedures to an attorney for his comments. He handed out a copy of the draft that incorporated the attorney's recommended changes. After a thorough reading of the document, the group agreed to make the following changes.

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Department of Natural Resources and Conservation Authority:

The committee agreed to strike "(In the interest of encouraging a cooperative/consistent approach among conservation districts administering the Act, the Department has prepared these "Draft Minimum Suggested Standards For Emergency Loss of Water Supply Claims For Compensation" for use by each conservation district in developing its local procedure. These suggested standards are intended as a starting point for conservation districts and may be modified as needed to address local conditions and needs. The Department retains its approval authority of individual conservation district submitted procedures for evaluating claims under the Act.)". The removal of this section is a housekeeping item; it should not be included in the final version.

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Application Criteria

The committee agreed to the following changes in the application criteria section:

1. Replace the word documented with private. The sentence will read: The applicant must be a *private* landowner or valid water right holder.
7. Replace damages with losses. This change was recommended by an attorney. The sentence will read: “The applicant must demonstrate that it is unlikely that compensation will be made by area coal bed methane developers or operators within a time frame necessary to avoid future substantial *damages*.”
9. Change item 9 to read: “The applicant must agree that any future compensation provided for the same lost water supply occurrence will be made available to the Coal Bed Methane Protection Program to offset any emergency payments made to replace the lost water supply.”

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Application

The group agreed to the following changes to the emergency loss of water supply compensation application:

Section A. Applicant Information:

Insert “private” in front of landowner. This section will read:

“I am submitting this application as: __ *private* landowner __ water right holder __ both

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Section E. Loss Attributable to Coal Bed Methane Development:

- 1) Insert “briefly” before the word discuss in sentence two. Also add “include well logs or other documentation” at the end of the paragraph. This section will read: “Discuss how coal bed methane development (CBM) caused your lost water supply. *Briefly* discuss the geologic or surface water connection of the coal bed methane development to your water supply, *include well logs or other documentation*.”

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Section F. Lost Water Supply Results in Substantial Damages:

Remove “1.)”, because it is the first and only item in this section (housekeeping).

Delete the word “directly” on recommendation from the attorney. This section will read:

“If the water supply is not replaced immediately, what substantial damages will result?”

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Section H. CBM Developers, Operators and Regulators Unlikely to Provide Timely

Compensation:

Remove the statement “And stating that any compensation provided by such entities in the future for the same lost water supply occurrence will be first made available to the Coal Bed Methane Protection Program to offset any emergency payments made to replace the lost water supply. This is covered under Application Criteria, item 9.

Application Process Timelines:

The committee agreed to the following addition to paragraph 4 of the timeline section: Insert “working” after two in the first sentence. This paragraph shall read: “Upon acceptance of an application, the conservation district administrator will distribute copies of the application to the board of supervisors and members of the district’s technical review team within two *working* days and schedule an initial review meeting or teleconference within five working days of application acceptance.”

The committee will resume the review of the Application Process Timelines criteria beginning with paragraph 5, page 7, at the next meeting.

Legal Assistance:

It was determined that the procedures should be checked over by an attorney for potential problems and there were some questions brought up as well. These questions were:

1. Do we need administrative rules/formal rules or are procedures acceptable?
2. What is the chance that this will open us up to lawsuits?
3. Can the DNRC release the money to a person rather than to the CD?
4. Can the individual CD’s amend these rules to be stricter than what the committee or statute recommends?

Attorneys being considered for this task are Pete Stanley, Billings, a tax attorney who also works with administrative law; and Helena McLay, Missoula, who comes from a ranching background and has experience in conservation easements and conservation law. Steve Schmitz will contact the attorneys. It was suggested that a local County Attorney might be to review the proposed procedures, thus saving the considerable expense of hiring a lawyer; Carol Watts will check with the Custer County Attorney and Penny Landon will ask the Carbon County Attorney. Steve suggested that having an outside source attorney become familiar with the document might benefit us in the long run. The group decided to take that suggestion under advisement.

Establish a Schedule for adoption of Model Procedures:

Having the procedures in place by May 2006, as was originally forecast, is probably not feasible. The committee will determine a timeline at the next meeting which will be held at 1 pm on April 17 at the Forsyth Country Club.

Proposed time line for approving CBM Protection Act Guidelines:

March:

- Find attorney to review document as amended to date.
- Incorporate any needed changes.
- Send out committee purpose for CDs to review.

April:

- List proposed amendments from legal review and get them out to CDs.
- Demonstrate application on one water loss well in Rosebud CD to find out if other items are needed. (Jim will put this together on his place.)
- Set the agenda for April 17th meeting.

May:

- Final amendments needed
- Final legal review
- Submit for DNRC approval
- Submit for affected CDs approval at their meetings.

June:

- By end of June all affected CDs will have approved procedures at their meetings.