

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

May 22, 2006—Forsyth Country Club—1:00 pm

**1:00 Welcome and Introductions:** Bob Petermann, Wibaux Conservation District, Scott Kaiser, DNRC, Roger Hybner, NRCS, Jim Rogers, Rosebud Conservation District, Steve Schmitz, DNRC, Steve Bullock, attorney, Laurie Kelley, Rosebud Conservation District, Jerry Lunde, Big Horn Conservation District and Penny Landon, Carbon County Conservation District attended the meeting. There was not a quorum present.

## **Old Business:**

**Steve Bullock, attorney at law:** Steve has been hired by Rosebud Conservation District to represent the conservation districts committee. Steve initially met with Jim Rogers, Rosebud Conservation District Vice Chairman and Coal Bed Methane Protection Act Committee Chair, who outlined the needs of the group. Since that meeting, Steve has talked to Don McIntyre, former attorney for the DNRC, Bruce Williams, Vice President Fidelity Exploration & Production Company, Senator Keith Bales, Steve Schmitz, DNRC, Mike Reisner, Northern Plains Resource Council, the Montana Petroleum Association and others to get their input on the subject. Steve believes that it is wise to give the document a thorough review before presenting it to the public.

## **Changes made to the document as a result of Steve's recommendations:**

Page 1:

**Overview:** Delete “**at this time funds are available only for emergency loss of water supply conditions meeting the appropriate Program criteria**”. The group also decided to delete “**damages related to**” in this section. Several other minor changes were agreed upon by the committee and will be presented to the committee when a quorum is present. The corrected paragraphs will read:

**Overview:** The Coal Bed Methane Protection Act established the Coal Bed Methane Program as provided for in Title 76, Chapter 15, part 9 of the Montana Code Annotated. The Program was established by the 2001 Legislature for the purpose of “...compensating private landowners and water right holders for damage to land and to water quality and availability that is attributable to the development of coal bed methane wells.” Mont. Code Ann. § 76-15-902(4). Pursuant to Mont. Code Ann. § 76-15-905, compensation is presently only available for emergency loss of water supply attributable to coal bed methane development.

**Conservation District Authority:** The Act assigns administrative authority over the Program to conservation districts, established under Title 76, Chapter 15 of the Montana Code Annotated, that have coal beds within the exterior boundary, or whose water sources may be adversely affected by the extraction of coal bed

methane. Conservation districts meeting these criteria are directed to establish procedures for evaluating claims for compensation submitted by a landowner or a water right holder. Conservation districts have authority to approve or deny claims for compensation, and to receive state compensation for administrative expenses relating to the Coal Bed Methane Protection Program.

**Department of Natural Resources and Conservation Authority:** The Act appropriates funds in the Coal Bed Methane Protection Account to the Department of Natural Resources and Conservation (“DNRC”) for use by the conservation districts. DNRC is also responsible for approving procedures established by the conservation districts for evaluating claims for compensation under the Act.

Page 2:

**Application Criteria:**

The application criteria were significantly revamped and will now read:

1. The applicant must be a private landowner, valid water right holder, or lessee of private or public land with an identifiable and documented interest in the land or water subject to the application.
2. The applicant must demonstrate an “emergency” loss of water supply, which is defined as “the loss of a water supply that must be replaced immediately to avoid substantial damage”.
3. The applicant must demonstrate that the loss of water supply is attributable to or caused by coal bed methane development.
4. The applicant must provide a viable plan and cost estimate for replacement of the water supply, and a signed commitment to implement the plan if funds are authorized by the conservation district.
5. 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 substantial damage.
6. The applicant must demonstrate that existing sources of state funding, including state-mandated payments that compensate for emergency loss of water supply damages, will not be timely available.
7. The maximum amount paid for emergency loss of water supply may not exceed \$50,000, and may not exceed 75% of the cost of the damages.
8. The applicant must agree to fully or partially reimburse the Coal Bed Methane Protection Account if the applicant receives compensation from another source relating to the same lost water supply occurrence, and such compensation exceeds the applicant’s total, out-of-pocket costs.

Page 3:

### **Draft Application for Emergency Loss of Water Supply Compensation**

Several minor changes were made to the first paragraph of the application. This section will now read:

Use this form to apply for compensation of emergency loss of water supply as provided under the Coal Bed Methane Protection Act, Title 76, Chapter 15, part 9 of the Montana Code Annotated. In general, an applicant must demonstrate in this application an emergency loss of water supply due to coal bed methane (“CBM”) development that must be replaced immediately to avoid substantial damage. All information must be legibly printed or typed, except where signatures are required.

#### **A. APPLICANT INFORMATION**

In the first line of this section, the category “**both**” was replaced with “**lessee**”. That line will read:

I am submitting this application as:  private landowner  water right holder  
 lessee

Other changes were minor and grammatical in nature.

#### **B. WATER SUPPLY INFORMATION**

*This section will now be a subsection of section A.* All sections will be re-lettered to reflect this change.

Page 4:

#### **Type of Entity**

The Private category was removed from this section; the categories “**Limited Liability**” and “**Individual**” were added.

#### **WATER SUPPLY INFORMATION**

The phrase (**Attach Documentation of Valid Water Right or Interest**) was added to the bottom of this section.

#### **B. GENERAL DESCRIPTION OF LOSS OF WATER SUPPLY**

The group agreed to replace “your” with “the” in this section. The sentence will now read:

“Provide a brief description of the loss of water supply, including the date the supply was lost.”

#### **C. EMERGENCY SITUATION**

The committee agreed to several changes in this section. It will now read:

“Explain why the water supply must be replaced immediately or in the immediate future.”

**D. LOST WATER SUPPLY RESULTS IN SUBSTANTIAL DAMAGE**

This section was originally section E. It has been amended to read:

“What substantial damages will be avoided by immediately replacing the water supply?”

**E. LOSS ATTRIBUTABLE TO COAL BED METHANE DEVELOPMENT**

This section was originally section D. It has been thoroughly revamped and will read:

- 1) Discuss how the lost water supply is attributable to coal bed methane development. To the extent known, please include the geologic or surface water connection of the coal bed methane development to the water supply, including well logs or other documentation.
- 2) Attach a statement of inspection from a licensed well driller (for lost well supply) or from a qualified water supply professional (for lost surface water supply) indicating that the lost supply is not attributable to insufficient or deteriorated water supply facilities.
- 3) If drought conditions have persisted in the area, include (a) historic use or monitoring information which demonstrates that the water source has previously supplied water under similar drought conditions or (b) other information which demonstrates that the lost supply is not attributable to current drought conditions.

Page 6

**F. CMB DEVELOPERS, OPERATORS AND REGULATORS UNLIKELY TO PROVIDE TIMELY COMPENSATION**

This section has been modified significantly and will now read:

Identify steps taken to notify CBM developers, operators and regulators to establish that compensation for the emergency loss of water supply is unlikely to be available immediately, or in a timely fashion. Please include any correspondence or other communications with these parties.

**G. WATER SUPPLY REPLACEMENT PLAN**

This sentence has been amended to read:

“Discuss proposed replacement water source and proposed development of that source.”

(Include a map of the replacement project, plan and specifications of the proposed facilities, and an estimate prepared by a third-party of the costs for which recovery is sought.)

The swearing section will be changed to read:

I \_\_\_\_\_ hereby attest that the information provided is accurate and complete. Further, I acknowledge that reimbursement from any funds approved by the conservation district as a result of this application will be based on completed work addressing the emergency loss of water supply, with submittal of documented paid receipts of the expenses. I also understand that past approval of claims by a conservation district does not bind the district to approve future, like claims.

Page 8

**APPLICATION PROCESS TIMELINES:**

Several grammatical changes were made to the timelines. The sentence “If the applicant fails to submit additional information within the ten day period, the decision will be deemed final and a new application must be submitted if further review is sought.” was added to the last paragraph. This section was amended to read:

A party may submit an application at any time.

The Board of Conservation District Supervisors and designated technical advisors, as non-voting members, will constitute the Application Review Team.

The conservation district administrator will undertake a preliminary review of the application, and identify to the applicant major deficiencies concerning the completeness of the application. Acceptance by the administrator does not indicate that the application is complete.

Upon acceptance of an application, the conservation district administrator will distribute copies of the application to the Application Review Team. The application must be distributed within two working days, and an initial review meeting or teleconference must be conducted within five working days of application acceptance.

The Application Review Team will identify additional information requirements or application deficiencies and communicate this information to the applicant within 3 days of the initial review. The Application Review Team may extend the review period for the application until such time as the Application is deemed substantially complete.

Upon receipt of a substantially complete application the Application Review Team will render a decision within 10 working days.

The applicant may request the conservation district supervisors to re-evaluate their decision based on additional information provided within 10 working days of the initial decision. If the applicant fails to submit additional information

within the ten day period, the decision will be deemed final and a new application must be submitted if further review is sought.

**Discussion:**

The timeline for passing the CBMPA is:

- ◆ May 23<sup>rd</sup>: Mail draft to CMBPA committee members.
- ◆ May 29<sup>th</sup> thru June 2<sup>nd</sup>: CBMPA committee members to phone their approval on draft to Laurie Kelly.
- ◆ June 5<sup>th</sup>: Steve Bullock to release draft for review.
- ◆ June 12<sup>th</sup>: Close of review period.
- ◆ June 13<sup>th</sup> thru June 25<sup>th</sup>: Compile comments from review and suggest changes for draft.
- ◆ June 26<sup>th</sup>: CBMPA Committee meeting in Forsyth.
- ◆ June 27<sup>th</sup> thru July 31<sup>st</sup>: CD's approve draft.
- ◆ Aug 1<sup>st</sup>: Procedure submitted to DNRC for final approval.

The committee, with input from legal counsel and the DNRC, determined that the districts would use the following method to approve the guidelines:

1. Set a schedule for adopting the procedures, including a date for the public hearing and final decision. The date for the public hearing can be the same day as a regular board meeting – either before or after it.
2. Draft a notice of hearing for publication. Include in the notice a general statement of the action the conservation district is taking. Also, include in the notice the time, place, and the manner in which interested persons may present their views on the adoption of the procedures.
3. Advertise in a newspaper of general circulation within the conservation district twice before the public hearing. The first notice at least 28 days prior to the hearing. The second notice at least 14 days later. As an alternative you may post the notice at public places where it is customary to post notices concerning county or municipal affairs generally. The notices must be posted at least 28 days prior to the hearing.
4. At the public hearing, read the notice into the record, and if a specific amount of

time for the public to comment was in the notice be sure to emphasize the time limits. Don't try to address the comments given at the public hearing, and only take note of questions so they can be answered in writing. Keep a record of your notice of the meeting, who attended, and minutes of the discussions.

5. You can pass the resolution to adopt the procedures at your meeting after the public hearing if you haven't received any comments.
6. If you receive comments you will want to take some time to consider them. If, based on the comments, you want to modify your document, discuss the options at your meeting, and set a date for revision and final adoption of the rules.
7. After the public hearing and adoption of new rules, send a copy of the notice, minutes, resolution, and a final copy of the new rules to Conservation Districts Bureau, Box 201601, Helena, MT 59620.

A sample ad and resolution will be drafted at the next meeting which will be held on June 26 at 1:00 pm at the Forsyth Country Club.

The meeting adjourned at 3:50 pm.