

GUIDELINES FOR CONSERVATION DISTRICTS FOR ADOPTING CBM RULES AND PROCEDURES

NOTE: The rulemaking and adoption process related to Coal Bed Methane is governed by § 76-15-901, et,seq. Districts must follow their own rules, provide notice, and allow opportunity for comment. Since there is nothing specific in the Coal Bed Methane Act that tells each district how to adopt these rules, the following general principles should be applied:

Article II, Section 8, of the Montana Constitution provides that "[t]he public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law."

Section 2-3-101, MCA, provides that citizens are to be "afforded reasonable opportunity to participate . . ."

Section 2-3-111(1), MCA, provides that "[p]rocedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public."

Section 2-3-103(1)(a), MCA provides that the essential elements of public participation are notice and an opportunity to be heard.

The proposed CBM rules have been developed, reviewed, and edited by the Coal Bed Methane Protection Act Committee (CBMPAC) and have had extensive legal review. The following guidelines are recommended for your review of the proposed rules.

1. Thoroughly go through the model rules document and discuss the options that your conservation districts will adopt. Keep in mind that any revisions to the rules that your district adopts will be subject to approval by the DNRC as set forth in § 76-15-905, MCA. If you have questions, contact any one of CBMPAC members or the Conservation Districts Bureau at 232-6359.
2. Set a schedule for adopting the rules, including a date for the public hearing and final decision. The date for your public hearing can be the same day as a regular board meeting – either before or after it.
3. 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 rules. The best practice would be to

ask for written comments with each person allowed 3 to 5 minutes to elaborate on his/her written comments. See sample ad below. Also, include a statement as to where the draft rules may be obtained.

4. 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 your 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.
5. At the public hearing, read the notice into the record, noting the date(s) and manner in which it was published, 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.
6. You can pass the resolution (copy provided) to adopt the rules or any revisions, which will be subject to DNRC approval, at your meeting after the public hearing if you haven't received any comments.
7. If you receive comments you will want to take some time to consider them. If, based on the comments, you feel the comments are something the CBMPAC committee may need to address, then provide the Committee with those comments. If there are modifications to the document, you will need to set a date for revision and final adoption of the rules.
8. After the public hearing and adoption of new rules, send a copy of the notice, minutes, resolution, and a final copy of the adopted rules to Conservation Districts Bureau, Box 201601, Helena, MT 59620.

EXAMPLE AD

In response to 2001 Coal Bed Methane Protect Act, the ____ Conservation District will adopt rules and procedures for evaluating claims for compensation submitted by a landowner or a water right holder who can demonstrate CBM extraction related damages such as loss of agricultural production or the reduction in quantity or quality of water that affects the beneficial use of that water. A public hearing will be held (date/time/place) to provide an opportunity to present views and submit written comments on the proposed rules. Copies of the draft rules are available by contacting the district at (address), (phone). (If a cd has a website, you may post the draft rules on your web and provide the website here).

RESOLUTION

WHEREAS, pursuant to § 76-15-905, MCA, the Board of Supervisors of each conservation district shall establish procedures for evaluating claims for compensation submitted by a landowner or a water right holder who can demonstrate CBM extraction related damages such as loss of agricultural production or the reduction in quantity or quality of water that affects the beneficial use of that water; and

WHEREAS, a public hearing on the proposed rules was held as required by law on **(DATE)**, after due notice was given.

NOW, THEREFORE, BE IT RESOLVED that the (district name) having considered all the comments received at said public hearing, hereby adopts the rules and Application attached hereto as Appendix A.

DONE and dated this ___ day of ____, 2010.

(district name)

Board of Supervisors

Chairman

Member

Member

Member

Member

Member

Member

ATTEST: _____

CD Administrator