

RULES AND PROCEDURES

For Implementing the Coal Bed Methane Protection Act

(Title 76, Chapter 15, Part 9, Montana Code Annotated)

(Effective after July 1, 2011)

Administered locally by the

Conservation District

Mailing Address:

Phone:

Fax:

Email:

Contact Person:

1. DESCRIPTION OF THE ACT

- A. Overview. The Coal Bed Methane Protection Act (“Act”), which is set forth at § 76-15-901 MCA through § 76-15-905 MCA, established the Coal Bed Methane Protection Program (“Program”) for the purpose of compensating private landowners and water right holders for certain damages that are attributable to the development and/or production of coal bed methane. See § 76-15-902(5) MCA.
- B. Conservation District Authority. The Act assigns administrative authority over the Program to local Conservation Districts that have coal beds within their exterior boundary or whose water sources (ground or surface), land values, or agricultural production may be adversely affected by the extraction and/or development of coal bed methane. See § 76-15-905(1), MCA. Conservation Districts meeting these criteria are directed to establish procedures for evaluating claims for compensation submitted by a private landowner or a water right holder. Conservation Districts have authority to approve or deny claims for compensation; and, to receive compensation for their administrative expenses under the Program. Compensation comes from the Coal Bed Methane Protection Account (“Account”), which is administered by the Department of Natural Resources and Conservation (“DNRC”).
- C. Department of Natural Resources and Conservation Authority. The Act assigns DNRC the responsibility to administer the funds in the Account for use by the Conservation Districts. See § 76-15-904(6), MCA. DNRC is also responsible for approval of Conservation District-established procedures for evaluating claims for compensation under the Act. In the interest of encouraging a consistent approach among Conservation Districts administering the Act, the Coal Bed Methane Protection Act Committee (“Committee”), consisting of representatives from the Big Horn, Custer, Carbon, Carter, Powder River, Rosebud, Treasure, Wibaux, Garfield,

Gallatin, Yellowstone and Prairie Conservation Districts, with approval by DNRC, has prepared the procedures, guidelines, and forms contained in this document. Each Conservation District may develop its local procedure. The DNRC's role is limited to approval of the Conservation District's rules and administration of funds in the Account. Other than review of the rules and procedures, the DNRC has no review authority over the Conservation District's decisions or actions implementing the Act.

2. DEFINITIONS. In these Rules and Procedures, the following terms shall be defined as follows:

- A. "Agricultural Production" means the production of: (i) any growing grass, crops, or trees attached to the surface of the land; or (ii) farm animals with commercial value.
- B. "Caused by Coal Bed Methane Development" means a change, impact, circumstance or effect of the type described in any relevant provision below, that has a demonstrable causal relationship to Coal Bed Methane development and/or extraction. If the involved change, impact, circumstance, or effect has a material causal relationship to something other than Coal Bed Methane development and/or extraction (such as drought, etc.), then the change, impact, circumstance, or effect shall be considered as caused by Coal Bed Methane development and/or extraction only to the extent it can be attributed to Coal Bed Methane development and/or extraction.
- C. "Claim" means an application for compensation for damages under the Program. In respect to damages that may be seasonal, cyclical, recurrent, or temporary in nature (for example, annual crop losses), a Claim encompasses all aspects of the damages for which compensation may be available under the Act.
- D. "Coal Bed Methane Developer or Operator" means the person who acquires a lease for the purpose of extracting natural gas from a coal bed.
- E. "Contamination, Diminution, or Interruption of Surface Water or Ground Water" means:
 - (i) the introduction of any element, compound, or other physical item to surface water or ground water which reduces or prevents in any way its ability to be beneficially used; or
 - (ii) any temporary or permanent reduction in flow, hydraulic head, flux, or occurrence of surface water or ground water which reduces or prevents in any way its ability to be used beneficially.The Minimum Filing Requirements necessary to establish the Contamination, Diminution, or Interruption of Surface Water or Ground Water are set forth in the Application Form, attached hereto.
- F. "Conservation District" means the Conservation District having its offices located in the Conservation District in which the damage occurred.

G. "Improvement" means any structure placed on land used in Agricultural Production, any physical alteration made to land used in Agricultural Production, or any structure used in the appropriation and use of a water right.

H. "Loss of Agricultural Production and Income" means any reduction in the productive capacity of land involved in Agricultural Production resulting in a loss of income to a Private Landowner. The Minimum Filing Requirements necessary to establish a Loss of Agricultural Production and Income are set forth in the Application Form, attached hereto.

I. "Lost Land Value" means an objectively demonstrable reduction in the fair market value of land owned by a Private Landowner. The minimum filing requirements necessary to establish Lost Land Value are set forth in the Application Form, attached hereto.

J. "Lost Value of Improvements" means any reduction in the monetary value, capacity, effectiveness, or utility of an Improvement. The minimum filing requirements necessary to establish Lost Value of Improvements are set forth in the Application Form, attached hereto.

K. "Minimum Filing Requirements" means the specific method of filing an application and the required material that must be submitted with the application, all as set forth in the attached Application Form that is made part of these Rules and Procedures by this reference and which is adopted by the Conservation District by its inclusion with these Rules and Procedures.

L. "Private Landowner" means any individual person or entity that holds the legal title to the surface estate of land. The term shall not include:

- (i) lessees;
- (ii) the state of Montana and its political subdivisions;
- (iii) the federal government; or
- (iv) an Indian tribe to the extent the Tribe's interest in land is subject to a trust restriction on alienation.

For purposes of these Rules and Procedures, all land owned by the same person or entity, and all land owned by persons or entities that are managed jointly or subject to common control, shall be deemed to be owned by the same landowner.

M. "Water Right Holder" means a person or entity, or his duly-authorized representative, which holds a legally-recognized right to the use of water. For purposes of these Rules and Procedures, all water rights held by the same person or entity, and all water rights held by persons or entities that are managed jointly or subject to common control, shall be deemed to be held by the same Water Right Holder.

3. ELIGIBILITY REQUIREMENTS. An Applicant must satisfy the following criteria to be eligible for compensation from the Program:

- A. The Applicant must be an eligible recipient for compensation as set forth in § 76-15- 905(3), MCA.

- B. If a Private Landowner, the Applicant must establish one or more of the following:
 - (i) Loss of Agricultural Production and Income Caused by Coal Bed Methane Development;
 - (ii) Lost Land Value Caused by Coal Bed Methane Development;
 - (iii) Lost Value of Improvements Caused by Coal Bed Methane Development.
- C. If a Water Right Holder, the Applicant must establish the Contamination, Diminution, or Interruption of Surface Water or Ground Water Caused by Coal Bed Methane Development.
- D. The Applicant must demonstrate that it is unlikely that compensation will be made by Coal Bed Methane Developers or Operators for damages that are the subject of the Claim.
- E. The Applicant must demonstrate that he/she does not have access to other existing sources of state funding, including state-mandated payments, to compensate for the damages that are the subject of the Claim.
- F. The Applicant must agree to reimburse the Coal Bed Methane Protection Account for any future compensation received from Coal Bed Methane Developers or Operators, or from any governmental agency or authority acting under coal bed methane development regulatory authority, for damage to land, agricultural production, improvements, surface water, or ground water, that is the subject of the Claim.
- G. The amount paid to each Private Landowner or Water Right Holder for each Claim may not exceed 75 percent of the cost of the damages for that Claim.
- H. The amount paid to each Private Landowner or Water Right Holder, regardless of how many Claims he or she may make or in what capacity, may not exceed \$50,000 in the aggregate.
- I. The Applicant must demonstrate that he or she has not already received compensation under the Act for the same Claim.

4. APPLICATION PROCESS.

- A. An Applicant must submit an Application to the Administrator of the Conservation District in the County in which the damage occurred using the Application Form attached hereto. An Application will not be considered filed until it is complete. The review period for the Application shall not commence until such time as the Administrator designates the Application as complete. Incomplete Applications will not be considered for funding.
- B. The Administrator will initially identify any additional information requirements or Application deficiencies and will communicate the same to the Applicant within five (5) working days of receipt of the Application. The Applicant shall provide the requested additional information within ten (10) working days. If, upon request, no additional information is provided within the ten-day period, the Application will be denied

without prejudice, and may be resubmitted at a later date with the additional information. The Application will be considered filed and will be given a filing date and time upon receipt of the additional information and designation by the Administrator that the Application is complete for filing.

C. Two members of the Board of Conservation District Supervisors, and their designated technical advisors, will constitute the Application Review Team ("ART"). Technical advisors shall be non-voting, advisory members of the ART. The decision-making authority of the ART shall rest with the designated Supervisors. The ART, including its advisors, shall have the discretion to request any supplemental information from the Applicant as necessary. The ART may request the Applicant or a representative to be present at a site visit to gather further information regarding the Claim.

5. DECISION PROCESS

A. Upon receipt of a complete Application, the Conservation District Administrator will distribute copies of the Application to the Application Review Team ("ART") within ten (10) working days, and schedule an initial review meeting and/or teleconference of the ART within twenty (20) working days of receipt of the complete Application by the Administrator.

B. Within forty-five (45) working days of the receipt of a complete Application by the ART, the ART will prepare and provide to the Conservation District Board of Supervisors, and to the Applicant, a written proposed decision. The ART or the Administrator may in writing extend this time by one thirty (30) working day period. The proposed decision shall contain a statement of the reasons for the proposed decision, and shall recommend that the Application be granted or denied (in whole or in part), or granted on condition. If the ART cannot agree on a proposed decision, each voting member of the ART may present a proposed decision to the Conservation District's Board of Supervisors.

C. The Applicant may submit written exceptions to any proposed decision prepared by the ART or any member of the ART.

(i) To be timely, the exceptions must be submitted to the Administrator of the Conservation District within ten (10) working days of the service of the proposed decision. Service is as defined in 5(F), below. A written request for additional time to file exceptions may, in the discretion the Administrator, be granted upon a showing of good cause. The ten-day period may be waived upon request of the Applicant.

(ii) Exceptions must specifically set forth the precise portions of the proposed decision to which exception is taken, and the facts and authorities upon which the Applicant relies. In the

exceptions, the Applicant may present additional information pertaining to the Application and may request a hearing before the full Board of Supervisors.

D. Within thirty (30) working days after written exceptions are submitted, or, if a hearing is requested within sixty (60) working days after written exceptions are submitted, the Conservation District Board of Supervisors shall:

- (i) adopt the proposed decision as the Conservation District's final decision on the Application; or
- (ii) reject or modify the proposed decision; or
- (iii) hold a hearing, if requested, and after such hearing adopt the proposed decision as the final decision or reject or modify the decision; and
- (iv) serve a copy of the Conservation District's final decision upon the Applicant within five working days of the date it is issued.

E. Only information that has been presented to or determined by the ART, or which is otherwise presented through the exceptions process before the Board, may be considered by the Board in the decision-making process.

F. All notices and decisions on an Application shall be deemed to be served on the Applicant on the day they are deposited in the United States mail to the address listed on the Application.

6. APPLICATION DETERMINATION, RANKING, AND PAYMENT

A. In order to approve an Application and request disbursements of funding from DNRC the Conservation District must:

- (i) record the date and time upon which each Application was designated as complete for filing;
- (ii) find that the Applicant has demonstrated, on a "more likely than not" basis, the criteria in paragraphs 3.A. through 3.I., above;
- (iii) rank the Application based on the criteria set forth in paragraph B., below; and
- (iv) complete an agreement with DNRC containing the purpose, scope of work, budget, timeframe and (if applicable) the reimbursement procedure for the approved compensation.

B. The Conservation District shall assign an Application Ranking Score to all approved applications according to the following criteria:

- (i) the loss or damage poses a significant threat to human health, safety, or welfare (high, medium, low); and
- (ii) the loss or damage will result in significant financial loss to the Applicant (high, medium, low).

C. DNRC shall disburse funds from the Coal Bed Methane Protection Account as requested by the Conservation District under the Program as follows.

(i) Within five (5) working days of approval of the Application, the Conservation District shall notify DNRC of the approved claim, including the filing date and time, which establishes the application completion date, and the application ranking score, and shall provide the DNRC with a copy of the Application and the District's final decision.

(ii) In accordance with the procedures set forth herein, the Department shall disburse funds available from the Coal Bed Methane Protection Account to applicants on a first-come first-served basis, as established by the filing date of each approved Claim.

(iii) In the event that two or more Claims are presented for funding with the same filing date and time, the DNRC shall fund all such Applications on a proportionate basis.

(iv) Disbursements by DNRC shall be made directly to the Conservation District, along with the Conservation District's administration fee. On receipt of funds, the Conservation District shall make the appropriate disbursement to the Applicant. The Conservation District shall have no responsibility to provide any funds to an Applicant until it receives funds from DNRC.

CHAIRMAN

DATE

VICE CHAIRMAN

DATE

SUPERVISOR

DATE

SUPERVISOR

DATE