

Why a Land Use Ordinance?

By: Jim Rogers, RCD Board Vice-Chairman

The Rosebud Conservation District's land use ordinance came about as a result of several meetings held by the MACD in 2001. The first meeting was held in Miles City and the subsequent meetings were held in Forsyth. The attendees were state agency people and conservation district people from the CBM affected counties in southern Montana. The impacts of CBM on the State's resources and how to quantify the affects were the topics of discussion. Presentations were given on soil structure and water quality, as well as how the permitting process would be carried out by the Department of Environmental Quality, Bureau of Land Management, and the Montana Board of Oil and Gas Conservation.

It was decided that baseline data needed to be collected and that a consistent protocol needed to be used to provide a creditable data system. Although several different entities did bring water management plans and soil testing protocols to the meetings, nothing was put in place to get this baseline monitoring done. The Bureau of Land Management's Environmental Impact Statement (EIS) was coming out at this time for comments and there was thought that this would provide some of the data that we were looking for.

The 2001 Legislative Session had also passed some items that would have some effect on CBM and on Conservation Districts. The Coal bed Methane Protection Act was passed. This ACT provides \$50,000 to a land owner or water right holder for damages related to CBM. Conservation Districts are given the authority to assess damages caused by CBM (a source point polluter) and award money to the damaged land owner or the damaged water right holder. It will be the duty of the conservation district to write rules and ranking criteria and award these monies to the affected people. The positive part of this Act is it makes \$4,000,000 available for resource damages. On the down side it is totally reactive. The damages that it pays for have already occurred, rather than protecting the resources from damage in the first place.

Another bill passed in this same session was the Coal Bed Methane Production Offset Act. This act provides for mitigation agreements before CBM wells are drilled within a mile of a water well with a water right. It also provides that water discharged while producing CBM gas is not considered to be water wasting. One of the problems with the act is that it only recognizes water rights within a mile of a producing CBM field, when the BLM EIS states that water draw down can affect ground water for up to 14 miles. The Powder River Controlled Ground Water Area states that there is a scarcity of water in south eastern Montana, and this Offset Act allows that CBM produced water is not to be construed as water wasting under any management as per MCA Section 85-2-505. This is a direct conflict for water conservation considering the amount of CBM produced water that will be discharged to the surface in order to produce CBM gas.

With these Legislative Acts, the setting of numeric standards for water quality by Biological and Environmental Research and the finalizing of the BLM's EIS, the concerns of our Conservation District Board of Supervisors had not been answered in a

manner that provided for the declared legislative policy in MCA Section 76-15-102; “To provide for the conservation of soil and the soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.” The provisions which allow a CBM operator to discharge CBM produced water without a beneficial use, just to dispose of the water through evaporation or other means, is a waste of water even if it is excluded under MCA Section 85-2-505. The absence of protection for our soils and sub-irrigated lands from the accumulation of salts and sodium from the water impoundments, water disposal or land application of CBM produced water have left the Conservation District to exercise our authority under MCA Section 76-15-7 to formulate a land use ordinance that is preventative in nature rather than being reactive.

This land use ordinance receives its authority from MCA Section 76-15-707(e); “provisions for such other means, measures operation, and programs as may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.” The land use ordinance provides that CBM produced water is used for beneficial use purposes. This means that the CBM produced water is not wasted but is used in a productive way and is not merely evaporated. The scarcity of water in our district means that water is a precious resource. This provision carries out the water conservation issue. The accumulation of salts and sodium in our district’s soil is addressed by lined ponds and by the monitoring of soil to which land applied CBM produced water is used. This provision provides for soil conservation and control of soil erosion. The items in the land use ordinance that provide for landowner consent, which are for location of impoundments and irrigated fields, are covered by MCA Section 76-15-102. The reclamation bonding for the impoundments also come under the same MCA Section 76-15-102 because this provision protects the tax base and provides for the general welfare of the people of this state and Section 76-15-707(e).

The Rosebud Conservation District Board of Supervisors’ recognize the importance of developing Coal Bed Methane not only for Montana and Montanans, but also for the citizens of the United States. The Board takes its role in resource conservation seriously and in order to fulfill its obligations to the State of Montana under MCA 76-15-101 and 76-15-102 the Board must move forward with the referendum. This referendum offers a proposed land use ordinance that fulfills our role as a Conservation District in Montana. If the proposed land use ordinance is approved by the voters, the Board of Supervisors of the Rosebud Conservation District will be able to enact this proposed land use ordinance and the regulations prescribed in the ordinance will have the force of law. Please take the time to study the proposed land use ordinance and then vote for the way you want to have your resources managed.

Copies of the land use ordinance are available at the RCD office at 270 S. Prospect or by email. If you would like a copy sent to you by mail, please call the office at 346-7479 and we will get one out to you right away.