

DOING IT RIGHT



Northern Plains Resource Council's campaign

to ensure that Montana's family farms and ranches, water resources, soil, and wildlife are protected from the impacts of irresponsible coal bed methane development

Coal bed methane is already being developed in Montana. In these times, it is clear that more of it will be tapped. Our challenge is to ensure that methane drillers do it right. We have the opportunity to avoid the disasters to soil and water that have been visited upon the land and people of other states.

How Coal Bed Methane Development Will Impact Montana

Coal bed methane occupies underground coal seams and is held in place by water pressure. To get to the methane, drillers bore into the coal seam, pump out thousands of gallons of water daily, and pipe out the displaced methane gas. The discharged water contains high amounts of sodium and salts and often gets dumped into rivers and streams or piped into unreliable or leaking wastewater pits.

Irrigators who have relied on river water for generations now risk ruining their crops, as sodium-laced water destroys soil structure. The high-volume discharges further deplete precious aquifers that feed seeps and springs, crucial for watering livestock and providing potable water for wildlife.

Many eastern Montana landowners live above federal- or state-owned minerals, and therefore have no control and little advance notice of methane drillers who plan to drill on their property. Now the methane industry wants to gain water rights to its discharge waters — even to the point of shipping Montana water to other states — which will turn a century of water law on its head and deplete a precious resource we can't afford to lose.

Solutions for *Doing It Right*

Northern Plains wants the coal bed methane industry to Do It Right. This means:

- Defending the water rights law that has conserved and allocated precious water resources for more than a century;
- Enforcing water quality standards that prevents water pollution;
- Protecting the rights of landowners whose property is impacted by coal bed methane drilling;
- Reclaiming lands that have been damaged by the drilling, roadbuilding, pipelines, and impoundment dams that accompany methane development;
- Developing responsible solutions to the problem of salty discharge waters, including water treatment and, where appropriate, reinjecting the water back into the aquifers being depleted;
- Protecting wildlife affected by methane drilling;
- Requiring the methane industry to shoulder its fair share of the tax burden.

Help Us Rein Them In

State Forced to Study Impacts of Coal Bed Methane Wells

When coal bed methane first came to Montana, the state began issuing permits with absolutely no study of its likely impacts. It took a Northern Plains lawsuit to force the preparation of an environmental impact statement. That EIS for methane development in Montana forecast:

- 9,000 miles of new roads;
- 28,000 miles of new power lines and pipeline corridors;
- 4,000 high-sodium wastewater impoundments;
- 70,000 acres of disturbed land;
- Up to 4.7 million acres of impacted wildlife habitat;
- 600-foot aquifer drawdown across the Powder River Basin, with recharge not expected until several decades after drilling ends.

These disturbances will impact a far greater area than just that sitting beneath the drilling pads. The EIS estimates as many as 26,000

wells will be drilled in Montana's portion of the Powder River Basin.

In today's energy markets, coal bed methane is a highly profitable business. Yet it is a business that enjoys a year-long tax holiday as it begins development. Ironically, this is the period when its salty water discharges and damage to the land are greatest.

Montana's leading methane company — Fidelity Exploration and Production Company (FEPCO,

a subsidiary of Montana-Dakota Utilities) — is seeking a water right to its discharge water.

It has requested rights to 6,863 acre-feet per year, with plans to market nearly half of it out of state. This would not only be a tremendous resource loss for the semi-arid lands of southeast Montana, it would also upend the principles of beneficial use and prior appropriation that have guided water rights law across Montana and the West since the 19th century.

FEPCO has applied for water rights for 6,863 acre-feet of groundwater per year, which is equal to:

- 4,255 gallons per minute**
- 6.1 million gallons per day**
- 2.2 billion gallons per year**

(That's enough milk jugs lined up side by side to go around the Earth's equator 8.5 times)



Northern Plains to Make Them D

From the very beginning, it became clear that state and federal agencies were inclined to promote the methane industry and other fossil-fuel developers instead of being watchdogs on behalf of the people. State and federal legislators have similarly been slow to deal with the very real impacts of methane development. The state's year-long "tax holiday" for gas drillers is just one example.

The lack of any environmental studies before issuing permits forced Northern Plains to court to demand an EIS. Our victory in this case is the reason environmental studies were done; state and federal agencies had thoroughly failed to represent the people's interests.

We mounted other court cases when state and federal agencies failed to enforce laws aimed at preventing pollution of land and water. We upheld the jurisdiction of the federal Clean Water Act to exercise oversight over pollution from coal bed methane discharges.

We published a guidebook for landowners impacted by mineral development and distributed it to more than 6,000 households. We distributed a factsheet called *Coal Bed Methane 101* to 26,000 households. Northern Plains

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Now is the Time to Act!

Protecting Water Rights in Montana

Efforts Do It Right

been the primary vehicle for educating the public, the media, and policymakers on coal bed methane and its impacts.

Northern Plains has annually urged for legislative action to protect water, to ensure information, and to defend the right of landowners. Fortunately, the Montana legislature has yet to seriously assess the impacts of methane mining.

Collaborating with three water conservation districts, Northern Plains has convinced the state to establish pollution limits for total dissolved solids, hardness, and salinity, and to protect the quality of Montana's streams. The methane industry has fought these standards in Montana over these years, but a state court upheld them, as well as the science on which they're based.

Northern Plains commissioned a scientific study to identify practical solutions such as riparian protection and water treatment to minimize pollution associated with coal bed methane discharges.

When the methane industry sought a grab for water rights, Northern Plains challenged the application, first in an administrative hearing, where it won a partial victory, and then in state court, where the case is today.

In an effort to evade Montana water quality standards Fidelity Exploration and Production Company, the largest coal bed methane company in Montana, applied late in 2006 for water rights to its coal bed methane wastewater. The water right permits would allow them to sell 3,000 acre-feet per year of water out of state and to put 3,863 acre-feet per year of water to "beneficial use" within the state.

However, their plan for most of this highly saline wastewater is land application disposal, which destroys soils and vegetation — hardly a beneficial use. Northern Plains filed an objection to the application, triggering a contested case hearing.

In April 2007, the hearing examiner for the Montana Department of Natural Resources and Conservation

issued a ruling in which FEPCO was denied the application for out-of-state marketing and which ruled that the in-state water right would end when the wells stop pumping gas. However, the company was still granted a water right of 3,683 acre-feet per year for in-state water uses (mostly land application, which destroys vegetation and soil — hardly a beneficial use).



Coal bed methane extractors discharge untreated wastewater into this ephemeral stream in Wyoming. The discharged water leaves white salt deposits on the banks and kills the vegetation that used to grow in and around the streambed.

Where Does Milk Come From?

In a convoluted display of legal maneuvering, Fidelity Exploration and Production Company's attorney argued, and the Department of Natural Resources and Conservation hearings officer agreed, that the water in question doesn't come from the ground (though that's exactly where it comes from), and instead originates in FEPCO's pipeline system. This is a lot like saying that milk originates in a milk carton, rather than in a cow.

The water is therefore redefined as not being groundwater, but something called "produced water" which falls under the jurisdiction of the Board of Oil and Gas Conservation, an agency very sympathetic to the methane industry. Once this water is in the

pipeline, no one else has access to it and, therefore, no one else, including a holder of a senior water right to that groundwater, has a claim on it. It seems to many that DNRC is dodging its responsibility as the lead agency for protecting our water resources.

The state's granting of this water right would turn a century of Western water law on its head, usurping the water rights of existing groundwater users by allowing coal bed methane companies a water right without a legitimate beneficial use. Northern Plains filed a legal challenge to the water right application in state court in June 2007. A hearing was held in May 2008, and this case is still in progress.

Your Voice is Needed to *Do It Right*

- Ask your state legislator to support laws that would improve protections for water, land, and property owners facing the impacts of coal bed methane development. Ask candidates whether they believe in energy development at any cost, or if they will force the methane industry to *Do It Right*.
 - Write to the Montana Department of Environmental Quality (P.O. Box 200901, Helena, MT 59620) and tell them how vital it is that Montana's water quality standards be enforced. The standards they adopted are no good without solid enforcement.
 - Join forces with fellow Montanans by becoming a Northern Plains member. As a member, you can:
 - Receive reliable information on this and other issues important to Montana's long-term future;
 - Play a meaningful part in the 2009 legislature as we seek to:
 - Defend water rights law in Montana;
 - Protect the rights of impacted landowners;
 - Reclaim lands affected by methane development.
- (Northern Plains has a very active citizen lobby effort, and you can be as involved as you wish.)
- Help protect Montana's water quality, family farms and ranches, and our unique quality of life.

“This thriving citizens organization exemplifies the ideal of public involvement in public processes.”

- **Billings Gazette, 2001**

Making the methane industry *Do It Right* takes more than hoping. It means effective requirements to protect our streams and our aquifers. It means guiding development so that impacts to the land are limited, and it means setting realistic performance bonds to ensure that the land is reclaimed. It means protecting water rights laws that have conserved and allocated precious water resources for more than a century.



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MEMBERSHIPS

- General \$35
- Range Rider \$50+
- Rough Rider \$100+
- Bottom-line Rider \$200+
- Rider of the Big Sky \$500+
- Living Lightly \$15
- Automatic payment from my bank account each month: \$ _____

Northern Plains Resource Council is a grassroots conservation and family agriculture group. Northern Plains organizes citizens to protect Montana's water quality, family farms and ranches, and our unique quality of life.

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