

**WRITTEN TESTIMONY OF BRUCE WILLIAMS
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SB 336 – The Coal Bed Methane Operations Reclamation Act
Senate Natural Resources Committee
February 11, 2005**

Fidelity Exploration & Production Company is opposed to Senate Bill 336. The provisions of this bill unnecessarily duplicate existing regulatory programs and permitting. The Montana Board of Oil & Gas Conservation (MBOGC) has statutory authority to regulate the oil and gas industry on private and state minerals in the state of Montana, including the exploration, development, production and reclamation of oil and gas wells and associated facilities. The Bureau of Land Management (BLM) has statutory authority to regulate the oil and gas industry on federal minerals in the state of Montana, including the exploration, development, production and reclamation of oil and gas wells and associated facilities. SB 336 singles out coalbed natural gas (CBNG) and creates in the Montana Department of Environmental Quality (MDEQ) a duplicative regulatory process that will provide no additional protections not currently available through the MBOGC and BLM programs.

There is no demonstrated need for this program of permitting and regulation. MBOGC issues permits for drilling and completion of CBNG wells on private and state minerals only after detailed development plans have been provided to the Board, reviewed and approved by the Board following public hearing and after required Montana Environmental Policy Act (MEPA) analysis has been completed by MBOGC staff. In the case of state minerals, the Department of Natural Resources & Conservation (DNRC) Trust Lands Management Division completes its own analysis and MEPA documentation before submitting a project to the State Land Board for approval. The BLM issues permits for drilling and completion of CBNG wells on federal minerals only after detailed development plans have been provided to the Bureau and after National Environmental Policy Act (NEPA) analysis has been completed. The table of contents of a recently submitted development plan is included as Attachment 1 to this testimony.

Surface construction and reclamation activities are currently regulated and permitted by MDEQ through the storm water construction permitting program. That program requires the operator to identify the surface disturbing activities that will be conducted, to state the controls that will be put in place for prevention of erosion and the plan of reclamation of the surface disturbing activity. Only after reclamation of these activities is complete is the operator released from obligations of the storm water construction permit.

In addition to the state and federal regulatory processes in place, the operator is generally working under a contract with the surface owner that defines the way operations will be conducted on that owner's property.

SB 336 creates a serious infringement on the rights of a surface owner to decide what he/she wants done on his/her land. Throughout the bill there is a conspicuous lack of a requirement for consultation with the surface owner relative to his/her wishes.

SB 336 starts with the basic assumption that impacts from CBNG production are similar to those of surface mining. The bill itself is a modification of surface mining statutes in

an attempt to apply them to CBNG operations. In reality, the impact of CBNG operations is not significantly different from that of conventional oil and gas operations and is significantly less than that of surface mining. Attempting to regulate this portion of the oil and gas industry like surface mining is unwarranted.

The following are Fidelity's specific comments regarding SB 336:

Page 1, lines 20-21 NEW SECTION. Section 1. Short title

While the short title states "The Coal Bed Methane Operations Reclamation Act", the bill establishes requirements for obtaining operating permits as well as reclamation plans.

Page 3, lines 1-5 NEW SECTION. Section 3. Definitions

"Coal bed methane operation" or "operation" is defined to include all aspects of the coalbed natural gas activity, including "prospecting" which is later defined as including gathering of pre-development environmental data necessary to apply for a permit. This creates a "catch-22" situation where an operating permit is necessary prior to gathering data necessary to apply for an operating permit.

Page 3, lines 10-11 NEW SECTION. Section 3. Definitions

Defining "developed water resources" as land used to store water is totally inconsistent with traditional understanding and definitions of water resources. Water resources are water, not land.

Page 4, lines 4-5 NEW SECTION. Section 3. Definitions

The definition of "land application and disposal" is so broad it can include any irrigation or managed irrigation with produced water. This takes an unregulated activity (irrigation) and makes it a regulated activity. It is a further infringement on the rights of the surface owner to beneficially use water developed from beneath his/her land.

Page 4, lines 16-22 NEW SECTION. Section 3. Definitions

"Prospecting" is a term inconsistent with oil and gas industry terminology, which uses the term "exploration". The inconsistency can be expected since the entire bill parallels mining law, which covers an operation far different than oil and gas operations.

Page 5, lines 4-5 NEW SECTION. Section 3. Definitions

The definition of "restore" or "restoration" assumes that existing land use is changed as a result of coal bed methane operations. That is not the case. Coalbed natural gas operations are conducted in concert with existing land uses.

Page 5, lines 10-17 NEW SECTION. Section 3. Definitions

The definition of "surface owner" has been broadened to include a person who may be occupying and using the land without ownership (e.g. a lessee of the land). That takes control of the land out of the hands of the rightful owner and is a taking.

Page 5, lines 21-24 NEW SECTION. Section 3. Definitions

"Written consent" requires that a contract between two private parties, the operator and the surface owner, comply with a form approved by the department.

This is an unreasonable restriction of the rights of the parties to enter into a contract of their choosing.

Page 5, lines 26-29 NEW SECTION. **Section 4. Board Rules**

This section gives the Board of Environmental Review (BER) extraordinarily broad power to develop rules regarding coalbed natural gas operations that are totally outside the realm of the BER.

Page 6, lines 14-16 NEW SECTION. **Section 7. Investigation, research, and experiments**

This section provides no protection for either the operator or surface owner to protect trade secrets or confidential information from public dissemination.

Page 6, line 28 NEW SECTION. **Section 9. Operating permit – limitation – fees – term**

As pointed out in the first comment, this bill establishes a requirement for obtaining an operating permit, which is totally duplicative with the processes of the MBOGC and BLM.

Page 7, line 12 NEW SECTION. **Section 9. Operating permit – limitation – fees – term**

This line allows an applicant to question whether proposed MDEQ expenses are duplicative or excessive but provides no mechanism for resolution of the matter.

Page 7, lines 20-21 NEW SECTION. **Section 9. Operating permit – limitation – fees – term**

This again assumes that existing land use is changed as a result of coalbed natural gas operations. That is not the case. Coal bed methane operations are conducted in concert with existing land uses.

Page 8, lines 14-16 NEW SECTION. **Section 9. Operating permit – limitation – fees – term**

This provision requires making public a contract between two private parties. Landowners have consistently resisted the recording of surface use agreements because of their desire to keep their business dealings private. This is another infringement on the rights of the surface owner.

Page 9, line 20 NEW SECTION. **Section 9. Operating permit – limitation – fees – term**

The average life of coalbed natural gas wells in the Powder River Basin will be longer than five years. The provisions of the bill specify regulating operations and reclamation until the closure of facilities. Provisions in the bill allow for MDEQ to arbitrarily modify the permit requirements and reclamation bond requirements, as needed. Therefore, no reason exists to limit the term of the permit except to harass the operator. No provisions are included in the bill describing permit renewal requirements.

Page 10, lines 26-30 NEW SECTION. **Section 10. Reclamation plan and specific reclamation requirements**

Standards for vegetative cover and schedules for reclamation activities are already included in existing MDEQ storm water construction requirements and in

MBOGC and BLM requirements. Defining these time frames in statute for activities in a semi-arid region is folly.

Page 11, lines 6-30; page 12, lines 1-25 NEW SECTION. **Section 11. Inspection – issuance of permit – modification, amendment, or revision**

Time frames defined in this section are too long given the nature of coalbed natural gas operations and the duplication of processes between the MDEQ under this bill and the MBOGC and BLM under existing regulations.

Page 12, lines 29-30 NEW SECTION. **Section 12. Performance bond**

Setting a minimum bond amount in statute without study of the actual reclamation costs associated with coalbed natural gas operations is not wise. Because the definition of “affected land” includes the subsurface and the objective of coalbed natural gas production is to affect the subsurface through withdrawal of natural gas and associated water, the bond amount could become higher than the capital cost associated with the development. The bond could be entirely unreasonable for the affect the activity is having on the land.

Page 16, lines 1-5 NEW SECTION. **Section 13. Annual report of activities by operator**

Reclamation activities associated with surface construction are already reported to MDEQ when completed under construction storm water discharge permits. Monthly reports of production are reported to MBOGC and BLM. Regular inspections of drilling and construction activities are conducted by MBOGC and BLM.

Page 16, lines 27-28 NEW SECTION. **Section 13. Annual report of activities by operator**

MDEQ should not be allowed to arbitrarily change permit terms and conditions. To avoid appeal hearings the operator and surface owner should be consulted before MDEQ reaches any final decisions.

Page 17, line 8 NEW SECTION. **Section 15. Reclamation by department – liens**

This entire section is an unwarranted infringement on the rights of the surface owner.

Page 31, lines 4-5 **Section 28. Amendment to 70-30-102. Public uses enumerated.**

Imposing the right of eminent domain on the surface owner is an unwarranted infringement on the rights of the surface owner.

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- Reservoir & Irrigation Appendix
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