

State grapples with liability issue in transfers from industry to private landowners

Can CBM ponds change hands?

By DUSTIN BLEIZEFFER - Star-Tribune energy reporter | Posted: Wednesday, July 21, 2010

State regulators say they must answer some legal questions about how a landowner can assume liability for reservoirs that were built to dispose of coal-bed methane gas water.

On Tuesday the Wyoming Oil and Gas Conservation Commission took under advisement an application by J.M. Huber Corp. to transfer ownership -- and presumably liability -- of two off-channel reservoirs to a surface owner, Forrest Dunning.

Rather than fill in the reservoirs and ask the state to release its surety bond according to its permit requirements with the state, J.M. Huber said it has an agreement to transfer the reservoirs to Dunning, a Sheridan County rancher.

Dunning wants to take the money -- about \$70,000 -- that J.M. Huber would have spent to fill in and reclaim the reservoirs and instead pay a contractor to line them with plastic and fix a seepage problem. Dunning wants to take on liability for the reservoirs and integrate them into his agriculture operation.

"Why not use it for my benefit and the benefit of younger generations?" Dunning said.

During the past decade, thousands of reservoirs were newly built or modified to store coal-bed methane water across the Powder River Basin. The legal industry standard in Wyoming has been to pump large volumes of water out of coal aquifers, relieving the hydrostatic pressure that holds the gas in place.

Now thousands -- perhaps 20,000, according to some estimates -- of coal-bed methane gas wells no longer produce commercial volumes of gas, or large amounts of water.

That means companies like J.M. Huber desperately want to reclaim wells, roads, water outfalls, disposal reservoirs and other facilities, as required, so that state and federal regulators will release their surety bonds.

While some landowners are eager for those facilities to be dismantled and reclaimed, others like Dunning want to assume ownership and liability for the facilities.

"I'm prepared to accept full responsibility for the pits," Dunning told members of the commission.

But Gov. Dave Freudenthal, who serves on the board of commissioners, said he's not sure whether the commission can approve of the proposed agreement between Denning and J.M. Huber. Denning is not an oil and gas developer and is not beholden to the commission's authority under any permit.

A J.M. Huber representative told Freudenthal he believed the contract with Dunning, if approved by the commission, would relieve the company of liability. Freudenthal said J.M. Huber is asking to be relieved of its liability, yet the commission may not have the authority to hold Dunning responsible for any unforeseen problems with the reservoirs.

"Actually, I think it's a pretty good thing. But I don't see in the rules where they [J.M. Huber] are free of liability," Freudenthal said.

Commissioner Bruce Williams, who for many years managed a coal-bed methane company in the Powder River Basin, suggested the commission merely has to decide whether to relieve J.M. Huber of its duty to reclaim the reservoirs.

The question of J.M. Huber's long-term liability may be a question for the courts or the state engineer's office. If the reservoirs are transferred from an industrial use to an agricultural use, they may then fall under the authority of the state engineer.

"I don't think you [the state oil and gas commission] have an obligation to hold the gun against Huber's head forever," Williams said.

State attorneys were asked to prepare answers to several legal questions brought up in the hearing.

The commission is also struggling with whether to allow companies to transfer ownership of actual wells to landowners. At the beginning of the coal-bed methane play some 10 years ago, landowners were promised they could take over some of the wells as water wells when gas volumes were no longer commercial.

But the state oil and gas commission regulations require that wells be cemented in the coal zones, which would prevent them from being economically viable water wells for landowners.

Contact energy reporter Dustin Bleizeffer at (307) 577-6069 or dustin.bleizeffer@trib.com. Go to <http://tribtown.trib.com/DustinBleizeffer/blog> to read Dustin's energy blog

Coal-bed methane water

In order to produce methane from coal seams, water is pumped from the coal aquifer until the hydrostatic pressure releases the gas. Several billions of barrels of Wyoming's groundwater have been pumped from coal aquifers and dumped onto the surface. Only a small percentage is put to specific beneficial uses such as stock watering and irrigation. The majority is stored in reservoirs for evaporation or allowed to wash down draws, sometimes flooding low-lying grazing pastures.