

# Coalbed Methane Working Group Meeting Summary

**April 1, 2010**  
**Clarion Inn, Gillette, WY**

**DRAFT (Do not circulate)**  
Draft Date: 04/16/10

**APPROVED (For general distribution)**  
Approval Date:

## Attendance

### *Working Group Members:*

Eric Barlow, Landowner  
Robert Brug, Landowner  
Rebecca Byram, Devon Energy Corporation  
John Corra, WY Dept of Env Quality  
Bill DiRienzo, WY Dept of Env Quality  
Craig Eggerman, WY Oil & Gas Conservation Comm  
David Gomendi, Anadarko Petroleum  
Tom Harriet, Landowner  
Bill Hill, WY Bureau of Land Management  
David Hill, Marathon Oil Company  
Steve Jones, Wyoming Outdoor Council  
Harry LaBonde, WY State Engineer's Office  
Bob LeResche, PRBRC  
Joe Olson, Williams Production Co.  
John Robitaille, Petroleum Assoc of WY  
Jason Thomas, WY Dept of Env Quality  
Ed Swartz, Landowner  
John Wagner, WY Dept of Env Quality  
Marge West, Landowner  
Terry Wolf, Washakie County Commission

### *Member Alternates:*

Dee Hillberry  
Bill Bensel, Powder River Basin Res Council

### *Absent:*

Steve Adami, Landowner  
Jim Hillberry  
Jill Morrison, PRBRC  
Ken Hamilton, Farm Bureau

### *Others:*

Dan Clark, WY Dept of Env Quality

### *Facilitators:*

Steve Smutko, Ruckelshaus Institute  
Joe Evers, Ruckelshaus Institute

## April 1, 2010 Meeting Agenda

1. Welcome, agenda review and approval
2. Public comment period
3. Meeting summary review and approval
4. Information and updates
5. Review and discussion of issue measures
6. Review and discussion of options
7. Next steps for preparing recommendations
8. Public comment period
9. Wrap up and next agenda

## Handouts Provided

1. Mar. 4, 2010 meeting summary
2. Apr. 1, 2010 Agenda
3. Options Report

## Actions Taken

1. Clarified and evaluated six options for permitting strategies.

### I. Welcome, Agenda Review

- A. Facilitator, Steve Smutko introduced the agenda. The agenda was approved as presented.

### II. Public Comment

- A. No one from the public chose to address the working group.

### III. Meeting Summary Review/Approval

- A. The March 4 meeting summary was adopted with minor attendee modifications.

### IV. Information and Updates

- A. John Corra introduced the update the group on the DEQ's meeting with the State Engineer's office (Harry LaBonde) and requests for updates for status with EPA (Jason Thomas).
- B. Harry LaBonde informed the group about a meeting between the State Engineers Office (SEO) and DEQ. This meeting was conducted in response to the working group's Issue #7 to assess the regulatory roles of state agencies. The meeting took place March 12. In attendance were Pat Tyrrell (SEO), Harry LaBonde (SEO), John Corra (DEQ), John Wagner (DEQ), Pete Michael (Office of the State Attorney General), and Steve Smutko. Under discussion was the SEO's authority for regulating water, specifically discharge amounts focusing on the flooding issue. The focus of the discussion was how to control releases to deal with downstream water quality issues as well as flooding. Harry will

present a permitting approach to limit discharge to the mean annual flood later in the day. He mentioned that the SEO is comfortable with some regulation of flow on DEQ permitting side, as long as it pertains to quality aspects. The consensus of the two agencies was to take some approach to regulating discharge based on some empirical formula. This is something both agencies would consider.

- C. Jason Thomas (DEQ) presented information about ongoing discussion with the EPA regarding its Tier 2 permits. DEQ issued 42 permits that EPA commented on, and has held up issuing new Tier 2 permits since the EPA raised their objections. DEQ and EPA have discussed interim objection permits covering 350 outfalls through back and forth conversations to get those permits moved forward. Some permits may be issued in the Belle Fourche and non-irrigated areas soon. On the remaining permits DEQ is working with the EPA on the 50 year containment permits. DEQ should have everything the EPA needs on those in the next couple of weeks. More discussion is needed between the two agencies on Tier 2 permits. DEQ and EPA are negotiating a way forward on the objections that EPA filed on Pumpkin Creek and Willow Creeks. This relates particularly to the issue of landowner waivers. There may be some room to look at site specific requirements to still provide landowners water that they want.

- D. Q: Who is attending these meetings?

R: We decided to keep them small, myself and Bob Brobst, the primary EPA Region 8 expert on irrigation. At this point the two agencies are just hammering out the technical issues.

- E. Q: Could you explain the new tier 2 permits up for comment?  
R: We decided for the time being to continue to process new applications when they come in to avoid a back up, but we are not issuing any new Tier 2 permits at this time.
- F. Q: You mentioned the EQC decision on the Tier 2, could you expand?  
R: One of the last Tier 2 permits we issued was last summer on Spotted Creek upstream of the West's ranch. The Wests appealed it based on the EC effluent limits in the permit. The EQC agreed with the West's position and revoked that permit. The DEQ now must address 190 similar permits.
- G. Q: Are reservoirs with misters going to be allowed to over-top, because the concentration of SAR and other minerals is much greater due to the misters?  
R: In general the DEQ doesn't regulate that activity, so they will be allowed. DEQ monitors that water downstream from the reservoir. If necessary, we can revisit those permits and apply additional restrictions so they meet downstream standards.
- H. Comment: The Oil and Gas Commission regulates from a rule dating back to 1984, which affects 90-some companies for pit treating and extends from in-channel to out-channel. Must keep the spray operation in the pit, no misting allowed.
- I. Q: When is the flow of the reservoir above the West's ranch going to be shut off?  
R: The Council has to issue the order for that permit to be revoked, and then DEQ will revoke it.
- J. Q: With regard to permits that are set to be issued, are you going to put those back out for public comment or not?  
R: For the most part no, because we are not making significant changes. We are just adding more information, they aren't changing their operations.
- K. Q: The EQC hearing issued that DEQ should rewrite the permits, that is my understanding. You said they revoked it?  
R: The motion from the Wests was to revoke the permit. The Council voted in favor of that motion. This is not a remanded permit situation.
- L. Q: Can we all have a copy of the EQC order once it has been signed?  
R: Yes, DEQ will make copies and get it to the group via email or hard copy by next meeting if the EQC makes it available by next meeting.
- M. Comment: The West attorney submitted a findings of fact and conclusion of law has been submitted to EQC who then sends it to DEQ's attorney.
- N. Q: In that particular case had there been any data collected at the irrigation monitoring point?  
R: As far as we know, there has been no over-topping event. It is a large reservoir with low effluent.
- O. Q: How long had the permit been in effect?  
R: A new company took it over, but it dates back 8 or 9 years.
- P. Q: If the EQC's decision was to cancel the permit, why hasn't it been done yet?  
R: DEQ can't act until we receive an order from EQC.
- Q. Q: When the Council issues their order and the company appeals it in District Court, does their existing permit stay in effect while they're under appeal?  
R: The order is what is in effect when it is signed and permit is revoked, the company can ask the District Court for a stay on the permit, but they have to follow the order even if they appeal it.
- R. Q: This decision doesn't just cover one permit, doesn't it apply to all Tier 2 permits?

R: No, it just applies to the one permit. The other 190 aren't affected directly by the Council decision.

S. Q: Did or did not the EQC say the Tier 2 permitting methodology was unacceptable?

R: The Council made a decision that the permit was flawed. It was an action on one permit, but we know and understand what the implications are. We have to be careful that we don't read too far into this ruling. DEQ has acknowledged that the Tier 2 process has issues that we need to work out, and that is the purpose of this working group.

T. Comment: DEQ is withholding 40 Tier 2 permits until we can see what we can do about the policy and we asked you all to help us with that. The purpose is to see if you can find a recommendation on a new approach.

U. Comment: It is relevant to say that the EQC decision is giving our group some guidance on the West decision and Willow Creek, gives us good guidance on pursuing a new permitting strategy.

V. Steve Smutko asked the group to close this discussion and get back to options that will make the permitting strategy better.

## V. Review and Discussion of Issue Measures

A. Steve Smutko reminded the group that they had curtailed their discussion on issue measures at the last meeting without concluding their discussion. One measure that was not yet defined was for Issue 5, "Maintain flexibility for landowners and operators."

B. Smutko proposed the following measure for Issue 5: *Maintain a choice of methods and approaches to meet permit requirements.*

C. The group approved this measure.

## VI. Presentation of Options

A. Steve Smutko asked the group to get back into coalition groups and look at new and existing options and identify the top two options they will present to the rest of the group. Smutko asked the group to limit their options to those that are consistent with a permitting strategy. (A permitting strategy was defined as: *Any approach that is within the authority of DEQ to include and enforce through a WPDES permit.*) Six options were presented. After each option was presented, the group asked clarification questions. Each option was characterized as to whether it was consistent with a permitting strategy.

B. **Option #71:** Continue the current ag. use policy with the addition of a joint management plan developed with landowners and permit applicant. (Corra, Hillberry, and Jones).

1. The option is consistent with a permitting strategy.

C. Questions and comments:

1. Q: What do you mean by landowners?

R: Landowners that would be affected in the watershed.

2. Q: Can a single landowner at the bottom of a drainage start the process?

(Answer not recorded)

3. Q: How can we get closer to finding out what does meet the law?

R: Must be in compliance with the Clean Water Act and protect ag. uses.

D. **Option #72:** Fix or eliminate Tier 2. Use vetted, credentialed science, be preventative not reactive and include meaningful enforcement or just get rid of

it. DEQ should prevent harm to lands and require producers to prove compliance. (LeReshe, Morrison/Bensel, Swartz, and West)

1. The option is consistent with a permitting strategy.

E. Questions and comments

1. Q: Could you expand on your comment about waivers?

R: EPA has a problem with waivers.

F. **Option #67:** Use-based WYPDES Agricultural Protection Permit Strategy (Byram, Gomendi, D Hill, Olson, and Robitaille)

1. The option is consistent with a permitting strategy

G. Questions and comments:

1. Comment: If you don't fertilize on a regular basis you automatically a decrease in yield, take this into consideration when talking about yield.

2. Q: You mention that strategies would be put in place when we see measureable decreases in yield. When does that evaluation take place? How will you know that damage hasn't already occurred?

R: I think that each evaluation has to be done field by field. We'd need some sort of a baseline to begin with.

3. Q: Is it up to the rancher to get this information?

R: Every field will be its own unique situation.

4. Q: no one has baseline data for EC and SAR. How do you establish baseline data at this point?

R: We can't go back, we can only look forward. Much smarter people than

myself tell me there are ways to establish a baseline.

H. **Option #8:** Deal with CBM wells and issues on a site specific basis. One size fits all policy is not feasible (Brug and Wolf)

1. Yes, option is consistent with permitting strategy.

I. No comments and questions.

J. **Option #73:** Limit CBM discharges to 10% of mean annual flood flow (LaBonde)

1. Borderline consistency with a permitting strategy. There is some question as to whether DEQ will be able to enforce through a WPDES permit).

K. Questions and comments:

1. Q: How would you relate this to the Game and Fish "Table A"? Would you say these factors are equivalent.

R: I'm not familiar, but I would say they are not similar.

2. Q: Could you define drainage area?

R: It's measured in square miles and is the area upstream of the point of discharge.

3. Q: Any incised natural water course would qualify, correct?

R: The State Supreme Court has defined a water course, however each drainage has different characteristics.

4. Q: One of the hang ups in previous attempts to do this the problem of having a channel above and one below, but none in between. Have you given any thought to this?

R: In this case I have not, but some options might be either letting it spread out over the flat area in

- between channels or cutting a channel and then removing it after CBM development.
5. Q: 10% was arbitrary, where did it come from?  
R: Strictly arbitrary, but could be debated by this group; threw it out for discussion purposes.
  6. Q: Mean annual flood flow every 2.33 years, the channel can naturally handle that flow on a very infrequent basis? Do you account to allow for this kind of flow 365 days a year?  
R: I'm saying that the way you arrive at a limit is by first calculating the mean annual flood amount then multiplying it by 10% and that is what's supposed to be allowed.
  7. Q: Is the SEO requiring 2 foot tubes?  
R: We have done more recently, we are requiring a bypass around the reservoir or that an agri-drain be placed.
  8. Q: The assumption is that the channel can handle the cfs, is that a default assumption?  
R: No. The statistical regression is that we would expect the cfs in a mean annual flood event.
  9. Q: Is it the area of the whole drainage or the channel?  
R: As you stand in the bottom of the drainage, it is the whole drainage, calculated based on where the divide is and goes all the way along the drainage basin.
  10. Q: Would the water continue to flow in the winter if the channel is frozen?  
R: In the most simple terms, yes, if the flow were unimpeded. But you could require flow to be reduced or eliminated in the winter.
  11. Comment: If you maintain a constant flow in the winter, it won't freeze as readily.
- L. **Option #69:** Modify the Ag. Use Protection document to include requirements for monitoring groundwater quality and levels, and soil quality above and/or in irrigated areas (DiRienzo, Eggerman, Tomas, Wagner).
1. The option is consistent with a permitting strategy.
- M. Questions and comments:
1. Q: Would there be a compliance component?  
R: The main attempt would for it to be a monitoring program and go back and change permit issues if a problem arises.
  2. Q: I keep hearing about changing the permits if the monitoring data suggests it needs to be done.  
R: There will be a provision in each permit that allows the agency to reopen each permit, but we have to go through the process to do so. We would monitor soil quality and the shallow groundwater.
  3. Q: The intent was to sample irrigated areas. Does that include naturally irrigated areas?  
R: Yes.
  4. Q: Who bears the burden of the cost of the monitoring wells?  
R: We would lay the burden on the operators.
  5. Q: How do you envision the monitoring system to work? A well below every reservoir, wells above irrigated areas? What is the frequency that the monitoring will occur?  
R: We haven't gotten to all of that yet. It is likely that we would want

to see a cluster of wells below a cluster of reservoirs. Perhaps for a drainage the size of Spotted Horse Creek wells could number from the dozens to the hundreds.

6. Comment: I feel that we should start looking at the cost and the man power. If it is too costly then companies can't make money. Then the state and employment suffer. The socio-economics will suffer from this proposal.

7. Q: Would this be on all drainages with irrigation, or only where we have identified potential problems?

R: I would be safe to say that it would be required everywhere. This could be part of an agreement with the EPA.

8. Comment: Shared costs for all operators in the basin.

9. Q: What do you visualize on how you will interpret all this data?

R: DEQ would be looking and sorting out the data, perhaps experts would be brought in too.

10. Q: How do all these monitoring wells go with BLM regulations?

11. R: They would probably come under the same as water wells do.

N. The group then evaluated the six options using the following criteria: (1) how well each option satisfies stakeholders interests; (2) how well each option addresses six key issues; (3) the degree of desirability of outcomes and feasibility of implementation. (Evaluation summaries to be distributed under separate cover).

## VII. Public Comment

A. Steve Smutko opened the meeting for public comment.

1. Unknown – Appreciates meetings and opportunity to speak. Joe is right, every outfall should be studied. Would like to see some water stay here instead of being pushed downstream.
2. Don Fisher Sheridan Office of DEQ – Some issues the group looked at in great detail, and some in broad strokes. Voting on some things was nebulous.

## VIII. Wrap up and Next Meeting

- A. Smutko reviewed the agenda for the May meeting.
- B. Smutko introduced the idea forming a “writing committee,” a subset of the working group, to draft recommendations. This committee would meet in late May or early June. The whole working group would then meet to review, comment, amend and vote on the recommendations.

### Next Meeting:

**May, 13, 2010**

**9:30-4:00**

### **Tech Training Center, Gillette**

1. Welcome
2. Agenda review and approval
3. Public comment period
4. Meeting summary review and approval
5. Information and updates
6. Review of options for permitting strategy
7. Discussion and selection of science panel
8. Plan for next steps
9. Public comment period
10. Wrap up and next agenda