



## The Full Story Behind the Montana Coalbed Methane Decision

By: [Bill Sparks](#)

Recent news reports regarding a Montana District Court decision in *Northern Plains Resource Council v. Montana Board of Oil and Gas Conservation*<sup>1</sup> regarding the constitutionality of methods for managing coalbed methane (CBM) water have failed to fully and accurately depict the import of this decision. In this case, the Northern Plains Resource Council (NPRC) and others challenged the Montana Board of Oil and Gas Conservation's 2003 Record of Decision (ROD) and Environmental Impact Statement that authorized CBM development and disposal of associated water in compliance with methods authorized by statute. Specifically, plaintiffs alleged that the ROD was unconstitutional because it authorized the "wasting" of water produced in conjunction with CBM development.

The court, relying on the Montana District Court's previous opinion in *Diamond Cross Props. v. State*,<sup>2</sup> found that management of CBM water utilizing discharge permits, reservoirs for stock watering, reinjection, use in wildlife habitat and dust suppression, managed irrigation, and domestic and industrial uses is not waste of water because these either are "beneficial uses" under Montana law or allow it to be used for beneficial purposes. See *NPRC*, Order at 7.

In this recent decision, the court made three substantial holdings in response to the plaintiffs' allegations. First, as to plaintiffs challenge to the Castle Rock and Deitz projects, the Court found plaintiffs' allegations were unsubstantiated and that Intervenor-Defendant Fidelity Exploration & Production Company's (Fidelity) use of CBM-produced water for managed irrigation was putting the water to beneficial use and thus constitutional. Order at 7-8. "Managed irrigation" is irrigating fields by applying CBM water to grow agricultural crops while protecting soil conditions. *Id.*

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<sup>1</sup> Cause No. 2003-579, Mont. 1st J. Dist. Ct., March 5, 2010.

<sup>2</sup> 2008 Mont. Dist. Lexis 180 (Mont. 22nd J. Dist. Ct., July 14, 2008).

Second, the court rejected plaintiffs challenge to a Montana Department of Environmental Quality discharge permit authorizing CBM water discharges into other surface streams. Order at 9. The court acknowledged that discharging into other water systems was not a waste of the water because it increased the availability of the water to others. *Id.* at 9. Last, the court found that the disposal of CBM water solely through evaporation—in this case “evaporation ponds” that enhanced evaporation by a mechanical device—is waste, because it does not put the water to a beneficial use nor does it make the water available for other beneficial purposes. Order at 11 (“This Court has no choice but to conclude that such use [evaporation,] is not beneficial....”

In sum, the only provision found by the court to be unconstitutional was the approval of the Waddle Creek ROD that allowed the disposal of the water by use of techniques to enhance natural evaporation. All other disposal methods of CBM-produced water at issue were found to be lawful and placing CBM discharge water to beneficial use.



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