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Opinion

(Published: January 11, 2004)

The road from here

Alaska has made some serious mistakes that must be corrected

Sixth in a series

Coal bed methane is a resource development opportunity that can supply parts of Alaska with a clean-burning fuel and make a modest but significant contribution to the state treasury. It is also a controversial industry that, in other places, has not been regulated adequately.

The industry does not yet know whether Alaska holds coal gas deposits worth producing. There is still some time to put rules in place to guide what could be a rapid, intensive form of development.

State and local governments, though, are playing catch-up. That's because, in recent years, state lawmakers went overboard in their enthusiasm to promote the industry. They created a leasing system that dissipates much of the state's power to decide when and where coal gas leasing takes place. They exempted the industry from certain environmental rules. They cast a cloud over local governments' ability to set appropriate rules for coal gas activity. If coal bed methane development is to be done right in Alaska, those flaws must be corrected.

- **Leasing reform:** Under current law (HB 394 from 1996), the state has little ability to plan when and where coal bed methane leases are appropriate. Huge areas of state land have been opened to coal gas leasing applications on a first-come, first-served basis. The state can refuse the applications only if there is no "benefit to residents of the area."

This law needs to be overhauled. Coal gas leasing presents difficult questions about how to balance different interests. Any leasing area should be established through systematic planning. The state should have to make a formal finding that leasing is in the "best interest" of the state, as it must for any other disposals of state land or resources. The public should get plenty of advance notice of where leasing may occur. Special efforts should be made to let property owners know that the state may lease the mineral rights under their land.

- **End environmental exemptions:** A law passed in 2002, SB 319, exempted coal bed methane from some solid waste and water pollution laws. State regulators are applying those exemptions narrowly for now, but there is dangerous potential for backsliding. Political pressure could lead the enforcement agency to liberalize the exemptions. Legal attacks by unhappy gas drillers are another potential threat. The language in the exemption statute is imprecise and open to dispute.

A more recent law, HB 69 from this year, gives the Alaska Oil and Gas Conservation Commission power to waive many of its regulations where coal bed methane operations "might be unduly delayed." The term "undue delay" is not defined. This dangerous loophole should be closed.

- State veto of local laws: HB 69 also allows the state to veto local regulations on coal bed methane. This is an arbitrary new state power granted on behalf of one particular industry. The state should not second-guess the wisdom of local government regulations on behalf of any special interest.
- Moratorium on new leases: The current moratorium on new coal bed methane leases is appropriate. It gives the state and local governments the time they need to develop specific standards that will apply to future development.
- Buyback of leases: In a perfect world, the state would never have set such liberal rules for issuing coal gas leases. But now that the state has handed out leases almost willy-nilly, it won't do any good to buy them back unless the state revamps its leasing system. Otherwise, the reacquired tracts will immediately become available again to a first-come, first-served application that the state would have almost no legal room to reject.

Even if a more rational leasing system were in place, a forced buyback is probably not the best way to correct the mistakes of the past. (If leaseholders want to sell, however, the state should entertain any reasonable offer.) A forced buyback would make sense if the state wants to reverse course and decide not to lease an area at all, as it did with Kachemak Bay oil leases two decades ago. But if the goal is merely to set better terms for how coal gas drilling proceeds, measures short of a buyback are probably sufficient.

Appropriate steps would include preventing surface access on small parcels, setting strict noise controls and requiring compliance with any future local land use restrictions. Stiffer rules could deliver strong protection without provoking an expensive and time-consuming legal fight from companies that don't want to be stripped of their leases.

Even if the industry meets state-of-the-art standards, there is no denying one central fact: Life will be different in the Mat-Su area if coal bed methane takes off. You can't put hundreds of gas wells amid 60,000 people living in a semi-rural setting without changing the character of the place. Where development is more suburban, gas operations will likely be greeted as an unwelcome industrial intrusion into residential areas.

Appropriate regulation can do a great deal to quell the most common conflicts the industry has produced elsewhere in the country. But it is not possible to have an industry that will never be noticed by neighbors. To get the jobs, income and tax receipts that could come from coal bed methane, the region will have to bear some costs and inconvenience.

Lawmakers, so far, have decided the state needs to cut corners and offer special treatment to help the industry get started here. That's exactly the wrong approach. Alaskans should make sure the industry meets decent standards for protecting the environment and reducing the impact on neighbors. If the industry can make money using best practices, then coal bed methane will be worth the costs. But if margins are too tight to support those standards, the costs are too high.

BOTTOM LINE: Alaska will have to change course and set stricter rules to ensure that coal bed methane is done right.

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