Why do they want to drill for oil and gas on my land?

Colorado is rich in oil and gas resources. Several areas in the state are experiencing an unprecedented energy development boom. While this production has provided economic benefit to these counties and the state of Colorado, it has also resulted in negative impacts to the people and environment of our state. One of the issues created by this boom has been significant conflict between surface owners and oil and gas operators over competing uses of the land.

In many parts of Colorado, rights to the oil and gas were leased some years ago. As of mid-2007, market prices for oil and gas continue to be near their historic highs. As a consequence, companies that have leased the rights to produce oil and gas are aggressively exploring for and trying to produce those resources in Colorado.

What is a split-estate?

Split estate means that the owner of the surface land does not own the minerals underneath that surface; that is, the surface and mineral estates have been "split." In many instances, this "split" occurred before the current owners of the surface purchased the land.

What if I disagree with the company on the location of the well pad and/or other facilities?

The surface owner may request the COGCC to conduct an onsite inspection with the owner and the company. Local government representatives may also participate, if desired by the landowner. The purpose of the onsite inspection is to determine if technical or operational conditions should be attached to the Application Permit to Drill (APD) to avoid unreasonable loss of crops, or land, and to address issues regarding health, safety, welfare or environmental impacts. (Rule 306)

What are the pros and cons of negotiating a SUA?

Colorado doesn't currently require companies to negotiate a Surface Use Agreement (SUA) or Surface Use and Damage Agreement (SUDA) with a landowner. However, many companies in the state will approach landowners with pre-written SUAs. Unfortunately, too many Coloradoans have been convinced to sign these on the spot, without determining if the SUA fully protects the landowners' rights.

Is the time and expense of hiring an attorney and negotiating a written contract with the gas company really necessary?

Some say yes and some say no. If you do not choose to hire an attorney, it is essential that you educate yourself in all areas of the well-drilling procedures from a property owner's point of view. A written Surface-Use Agreement (or Pipeline Right-Of-Way Agreement) may be a good way to solidify your contract provided you haven't worded it in a way that might be to your detriment in the future. Be aware that ultimately it is up to you to protect your rights.

For more information and sample surface use agreements, visit: *Oil & Gas at Your Door? A Landowner's Guide to Oil and Gas Development*: www.earthworksaction.org/LOguidechapters.cfm

Is it true that I will be liable for each day of earnings that are lost to the gas company while I consult with my own attorney? **No!**

You are entitled to a reasonable amount of time to ensure the protection of your rights and interests as the surface owner.

Will the company compensate me for damages?

Compensation of any kind from the companies to the surface owner varies dramatically from owner to owner depending on what the surface owner is willing to accept. What you accept depends on whether or not you know your rights and how well you negotiate. Do your homework and get whatever assistance you need to feel confident.

Often there is no equality in the amount of compensation received from one landowner to the next, or from one region to the next. Also, it is not always easy to find out how much you should be asking for. Often, there are clauses in surface use agreements that prohibit surface owners from disclosing the details of their surface use agreement. This makes it extremely difficult for landowners who are negotiating an agreement to know what is reasonable, or to try to negotiate agreements similar to what their neighbors have negotiated. Still, that should not prevent surface owners from talking with other landowners or attorneys, and trying to find out what level of compensation others have been able to receive.

— *Oil and Gas at Your Door*? page 111-9

For reported compensation amounts in various states, see *Oil and Gas at Your Door?* pages 111-9 to 111-11.

Rights of Adjacent Property Owners: If you own property adjacent to where a gas well, pipeline, or compressor is being constructed, call your county planning department to see what your rights are. You may also want to contact the surface owner of the land in question to ask if they would be willing to include your concerns in their negotiations.

For more information contact

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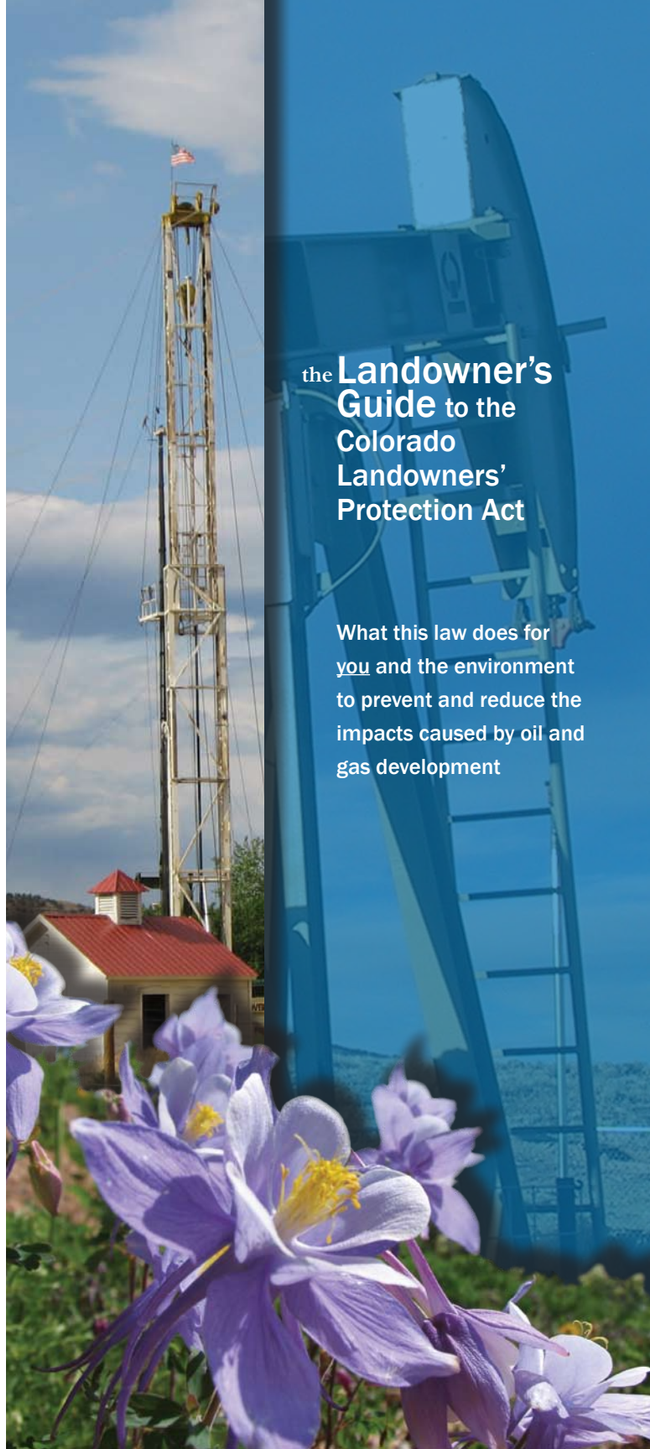

the Landowner's Guide to the Colorado Landowners' Protection Act

What this law does for you and the environment to prevent and reduce the impacts caused by oil and gas development

Colorado Landowners' Protection Act

The Colorado Landowners' Protection Act (CLPA) is a law passed by the Colorado Legislature, and signed by Governor Ritter in 2007, that puts into statute the 1997 Colorado Supreme Court Case, Gerrity vs. Magness. The CLPA is now hailed as one of the most powerful state laws in the nation in terms of protecting landowners' rights and the environment.

Why do we need CLPA?

Before this law was passed, oil and gas companies in Colorado were not required to consider the rights of landowners before drilling nor were they required to prevent and reduce their impacts.

For two decades, community groups and individuals have been working to reform oil and gas industry practices and the regulations and laws that govern oil and gas exploration and development. As a result, Colorado has implemented some of the country's strongest reforms. In 2007, the Oil & Gas Accountability Project, San Juan Citizens Alliance and others worked with Representative Ellen Roberts (R-Durango) and Senator Jim Isgar (D-Hesperus) to draft and promote the passage of this important law.

CONTACT INFORMATION IS ON THE BACK.

THE DETAILS

What does CPLA do for me?

In short, the CLPA requires that oil and gas companies:

- Consider the right of a landowner to use the surface of the land;
- Minimize intrusion upon and damage to the land;
- Use alternative means of operation to prevent impacts;
- Failing to minimize their intrusion upon the surface gives a landowner a cause of action (to bring a lawsuit); and,
- Bear the burden of proof in any litigation, and not landowners, when it comes to demonstrating that their use of the surface is reasonable.

In the 1997 Gerrity vs. Magness decision, the Colorado Supreme Court ruled that mineral owners may access the oil or gas beneath the surface in a way that accommodates the surface owner's use of their property "to the fullest extent possible." The court's decision provides a standard — minimizing adverse impacts to the surface — that surface owners did not have when negotiating with operators under Colorado Oil & Gas Conservation Commission (COGCC) rules or the Colorado Oil and Gas Act.

What kinds of requirements can I now negotiate with the oil and gas company?

The CLPA requires the oil and gas operator to "minimize intrusion on and damage to the surface of the land" and to employ "alternative means of operation that prevent, reduce or mitigate the impact of the oil and gas operations on the surface."

- For example, in many areas, the "alternative means" may include directional drilling. A landowner can now require directional drilling of multiple wells from one pad. In the northern Front Range, this alone can reduce surface use by 80%. For the family farm in the path of development, land values often exceed $25,000 per acre and each well with related easements and set backs occupies about 12 acres. Reducing the number of well sites from five to one on a 160-acre parcel will save nearly one million dollars' worth of land, at current land values.
- In other areas where emissions from oil and gas tanks and separators are causing health concerns to nearby residents, those emissions may be "intrusions" upon the land which damage land value. The CLPA provides the landowner with a tool to require the oil and gas operators to place adequate additional pollution controls on the equipment, beyond those already required by current state air regulations.
- Where flowback fluids from fracturing operations are contained in a reserve pit on the property, the CLPA may allow the landowner to insist on green fracturing procedures as "alternative means of operation" to protect the soil and groundwater from contamination.
- Pitless/closed-loop drilling systems have been found to reduce waste products, water consumption and truck traffic in drilling operations by 60% in the northern Front Range and elsewhere, with no additional cost to industry. The resulting water conservation, road maintenance reduction and air quality improvement provide immense social benefits.
- How the access road and well pad shall be constructed and maintained, as well as size of the well pad after initial construction, are all issues that can be addressed. Upgrading of existing roads or construction of new roads (including culverts, grates, and cattle guards) should be to industrial standards capable of handling industrial-sized traffic.
- Noise mitigation and use of technologies that minimize noise, such as hospital-grade mufflers and other sound proofing measures, and using a hydraulic type pump (DynaPump) instead of a beam pump may all come under minimizing impacts.
- Short-term reclamation of the well pad and access road can be addressed (i.e., closing of drilling pits, reseeding, removal of waste and debris, planting trees, etc. — all of which would be done within 3 months of initial construction and installation).
- The timing and duration of drilling and oil and gas operations can be negotiated. The BLM requires drilling to be completed within 90 days, start to finish, for example.

What if a company fails to minimize their impact on my land? If a company fails to minimize their impacts, then you have a cause of action under the CLPA in state court for monetary damages or other relief.

What does it mean that a company bears the burden of proof in any litigation? Once you have shown that the company's use of the surface materially interfered with your use of the surface, then the CLPA requires the company to show that its locations or means of operation minimized the intrusion upon the surface. A company may meet this burden by showing that no technologically sound and economically practicable alternatives were reasonably available. A company may also satisfy the CLPA requirements if it shows that its locations or means of operation are specifically required by regulation, contract or binding land use plan.

How do I negotiate with an oil and gas company? The companies often use a "landman" to negotiate with surface owners. **Take control of the negotiations!** Do not allow yourself to be intimidated by company representatives who are trying to get what they want. Don't sign any documents or accept any checks, money, or favors until you educate yourself sufficiently or consult your attorney. Consider getting a contract with terms suitable to you and that avails the use of all new technology. Then you can present your contract to the gas company for them to sign.

Is the company required to notify me in advance of drilling operations? Yes! State law requires the oil and gas operator to notify the surface owner at least 30 days prior to drilling operations. The purpose of the notice is to inform the landowner about when and where the oil and gas operations are to take place so that the surface owner can make plans to coordinate their own land use with the oil and gas operations. (COGCC Rule 305)

Is the company required to provide me with a development plan? Yes! The company is required to furnish a description of the proposed drilling location; dimensions of the well site; and, if known, the location of associated production or injection facilities, pipelines, roads and any other areas to be used for oil and gas operations. (COGCC Rule 306)