

"WHAT'S WORKING IN THE GAS PATCH: LOCAL REGULATION OF OIL AND GAS"

Panel Discussion

Rocky Mountain Land Use Institute

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"LIFE ACQUIRES MEANING WHEN WE FACE THE CONFLICT
BETWEEN OUR DESIRES AND REALITY."

-- Deng Ming-Dao
Taoist Philosopher,
Martial Arts Master

OUR DESIRE IS A COMMUNITY PLAN REGARDING IMPACTS OF OIL
AND GAS DEVELOPMENT THAT ADDRESSES PUBLIC HEALTH,
SAFETY, WELFARE, ECONOMY, ENVIRONMENT AND WILDLIFE
VS. COUNTY'S AUTHORITY TO ACCOMPLISH THE DESIRE.

One Way To Resolve The Conflict

<http://www.youtube.com/watch?v=XXoYi56g5zE&NR=1>

I. WHAT WORKS #1: COMMUNITY PROBLEM SOLVING.

A. Define characteristics of community

B. Pragmatic Premises of Community Problem Solving

- Ultimately, problems are community based.
- Problems can be solved in the community.

C. Principles of Community Problem Solving

- Local people can best solve local problems.
- People support what they help create.
- All facets of the community must be involved.
- Build on strengths to overcome impediments.
- "We persuade, if we do at all, by being irresistible, not by demanding the impossible." - May Sarton

D. Important Caveats

- Community mobilization is about relationships.
- Know your own strengths, prejudices, and limits.
- It's incremental; and it's hard work.
- Don't get discouraged (accept two steps forward; one step back when you must)

E. Choose a good issue/goal.

A good issue or goal is one that meets most of these criteria; it should:

- result in a real improvement in peoples' lives;
- give people a sense of their own power;
- be consistent with your values & vision;
- have a clear time frame that works;
- set your group up for its next campaign.

F. Collect all the players.

G. Organize.

1. Establish ground rules.
2. Set realistic goals and discrete tasks.
3. Build in interim rewards and accomplishments

H. DON'T:

- "...use a hatchet to remove a fly from the forehead of your friend."
- "...make important decisions with a power tool in your hands."

I. Traps to Avoid.

- The "Silver Bullet" (There is no such thing; use a systems/contingency approach.)
- The "Action Trap" (We've done something, now we can relax.)
- "Getting Lost In the Forest" (Stop, sit down!)

II. WHAT WORKS #2: “POLITICS IS THE ART OF THE POSSIBLE, THE ATTAINABLE – THE ART OF THE NEXT BEST”.

Otto von Bismarck
Chancellor of the German Empire,
1815 – 1898

A. FULLY CONSIDER SOURCES OF LEGAL AUTHORITY FOR A COLORADO COUNTY:

The following Colorado statutes can reasonably be used with issues of impacts of oil and gas development:

1. Local Government Land Use Control Enabling Act; C.R.S. 29-20-101 (1)(h). “Each local government within its respective subdivision has the authority to plan for and regulate the use of land by ...
 - (h) Planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.” ; and
 - (b) Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species.

2. County Planning And Building Codes;

- (a) C.R.S. 30-28-111. "The county ... may ... make a zoning plan for zoning all or any part of the unincorporated territory with such county ... for the regulation by districts or zones of the location, height, bulk, or size of buildings and other structures, percentage of lots which may be occupied ... the density and distribution of population ... and the uses of land for trade, industry, recreation or other purposes."
- (b) Public Welfare to be Promoted; C.R.S. 30-28-115. "Such regulations shall be designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity, or welfare of the present and future inhabitants of the state ... (including) fostering the state's agricultural and other industries ..."

3. Areas And Activities of State Interest Act; C.R.S. 24-65.1-101 et seq. ("1041"). The Act authorizes a County (and a municipality) to designate certain areas and activities of "state interest" and regulate them.

4. Oil And Gas Conservation Act.

C.R.S. 34-60-106(15) "The (COGCC) may, as it deems appropriate, assign its inspection and monitoring function, but not its enforcement authority, through intergovernmental agreement or by private contract, except that no such assignment shall allow for the imposition of any new tax or fee by the assignee in order to conduct such assigned inspection and monitoring, and no such assignment shall provide for compensation contingent on the number or nature of alleged violations referred to the commission by the assignee."

B. AUGMENT YOUR LEGAL AUTHORITY.

1. For instance: Fully participate in state regulatory processes; e.g Water Quality Control Commission stormwater discharge, triennial review of stream segment classifications)
2. Build coalitions; Gunnison County/Upper Gunnison River Water Conservancy District/High Country Citizens Alliance/Gunnison County Stockgrowers.
3. Local Government Designee Opportunities.

C. ANTICIPATE CHALLENGES.

1. THE AUTHORITY OF A COLORADO COUNTY IS LIMITED TO THAT WHICH IS DELEGATED BY THE COLORADO CONSTITUTION OR STATUTE.
 - As a political subdivision of the state, a county, and its commissioners, possess only such powers as are expressly conferred upon them by the constitution and statute, and such incidental implied powers as are reasonably necessary to carry out such express powers. Bainbridge, Inc. v. Board of County Comm'rs, 964 P.2d 575 (Colo. App. 1998).
2. PREEMPTION: IT IS NEVER PRESUMED!

D. CAREFULLY WRITE YOUR LOCAL REGULATIONS.

1. Consider both:

- “prescriptive regulations”
- “performance based regulations.

E. PREPARE TO BE SUED.

- Look what happens!

III. WHAT WORK #3: COUNTY REGULATION OF OIL AND GAS OPERATIONS.

A. GUNNISON COUNTY REGULATION OF OIL AND GAS OPERATIONS.

1. The Colorado Courts have held – over the passed 15 years – that nothing in the state Oil and Gas Conservation Act expressly or impliedly completely preempts local government authority to regulate oil and gas development. That is, both the state and local governments have an interest in oil and gas development and the primary goal is to achieve harmonious application of both the state and local regulatory schemes.

2. Regarding oil and gas operations, Gunnison County decided to adopt Performance Based Regulations. With this type of regulation we acknowledge that:

- Industry knows some aspects of oil and gas operations better than us.
- We, the local government, know the problems that can be caused by oil and gas operations. So, we list the problems to avoid and ask industry to offer proposed solutions. We can then determine if the proposed solution is sufficient. For instance "the oil and gas operation shall not cause significant erosion and sedimentation and shall be conducted in accordance with (an approved) drainage and erosion plan." We don't tell industry how to solve the problem; but we do review the proposed solution to ensure that it is satisfactory.
- This method is more likely to avoid an operational conflict, gives credit to industry for their knowledge and ability to avoid and solve problems, and creates room for different solutions in different geologic and environmental situations.

IV. WHAT WORKS #4: MEMORANDUM OF UNDERSTANDING and INTERGOVERNMENTAL AGREEMENT.

A. "IF YOU DON'T LIKE THE NEWS, GO OUT AND MAKE SOME OF YOUR OWN."

Wes "Scoop" Nisker
Newscaster, Buddhist poet

**Memorandum of Understanding
Between the Colorado Oil and Gas Conservation Commission and Gunnison County**

This MEMORANDUM OF UNDERSTANDING ("MOU") is hereby made and entered into by and between the Colorado Oil and Gas Conservation Commission ("Commission") and the Board of County Commissioners of Gunnison County, Colorado ("Gunnison County"), together referred to as the "Parties".

A. Introduction

The Commission and Gunnison County value a balanced approach to oil and gas development and propose to achieve that by fostering a robust regulatory landscape that is protective of human health, safety and welfare, as well the environment and wildlife, while coordinating regulatory efforts to provide for a regulatory framework that is predictable and consistent for industry. To that end, the Commission and Gunnison County are engaged in discussions to attempt to clarify and coordinate the application of their respective regulatory programs to oil and gas development within Gunnison County.

B. Purpose of Memorandum of Understanding

The Parties have enjoyed a successful working relationship in regulating oil and gas exploration and production and expect that relationship to continue. The Parties enter into this MOU to memorialize:

1. The intent of the Parties to continue their joint discussion to clarify and coordinate the application of their respective regulatory programs;
2. The intent of the Parties to schedule and conduct regular coordination meetings;
3. The intent of the Parties to take specific actions to make most beneficial use of the Commission's Local Government Designee ("LGD") process;
4. The intent of the Parties to take specific actions regarding assignment by the Commission to Gunnison County of certain Commission inspection authority and monitoring functions; and
5. The intent of the parties to enter into formal intergovernmental agreements to implement actions that result from this MOU.

C. Authorities

The authorities to enter into this MOU include, but are not limited to, the Colorado Constitution, Article XIV, Section 18 and Colorado Revised Statutes §§29-1-201 et. seq.

**Intergovernmental Agreement between the Board of County Commissioners of
Gunnison County and the Colorado Oil and Gas Conservation Commission**

I. Parties

The parties to this Intergovernmental Agreement ("Agreement") are the Board of County Commissioners of Gunnison County ("Gunnison County") and the Colorado Oil and Gas Conservation Commission ("Commission" and, collectively the "Parties").

II. Introduction and Purpose

In December 2011, the Parties entered into a Memorandum of Understanding ("MOU"). The MOU memorialized the Parties' intent to work together on regulatory matters related to oil and gas operations in Gunnison County, Colorado. The MOU contemplated the Parties would enter into this Agreement to, among other things, assign the Commission's oil and gas operations inspection function to Gunnison County pursuant to C.R.S. § 34-60-106(15).

III. Selection, Approval and Training of Inspector

Gunnison County may either employ a staff member or contract with a private entity to conduct inspections pursuant to this Agreement (the "Inspector"). Only persons who have been approved and trained by the Commission may conduct the inspections authorized under this Agreement.

A. Qualifications Inspector's qualifications shall, at a minimum, meet the Colorado Department of Personnel and Administration's qualifications applicable to Commission field inspectors.

B. Selection, Supervision and Control

1. Gunnison County will seek to fill the Inspector role via public advertisements or internal job announcements. Gunnison County will select the Inspector subject to Commission approval, which approval will not be withheld except for a conflict of interest or lack of appropriate qualifications.

2. Gunnison County will supervise the Inspector's routine activities, subject to appropriate communications with, and periodic reporting to, the Commission.

C. Training The Commission shall train the Inspector. The Inspector will attend the Commission's training programs, meetings and updates in person. Gunnison County shall be responsible for all costs associated with the selection, retention and training of the Inspector, including travel, lodging and

Another Way to Resolve Conflict

<http://www.youtube.com/watch?v=GSGqK-nZkaU>