SURFACE AND MINERAL CONFLICTS:
OIL AND GAS ACCESS AND NEW WEST REAL ESTATE DEVELOPMENT

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THE LANDOWNER/DEVELOPER TRACT
WHAT LAW GOVERNS SPLIT ESTATES

- **CONTRACT LAW**: Review the Lease, Addenda, and other documents including Surface Use Agreements
- **REAL PROPERTY LAW**: Separate Surface and Mineral Estate do exist; Created by Reservation or Grant
- Surface Estate is subject to an Implied Easement so that Mineral Owner may use that portion of Surface reasonable and necessary to extract minerals
GERRITY v. MAGNESS

- Operator may not destroy, interfere with or damage the surface owner’s **Correlative** rights to the Surface
- Use of the surface that is not reasonable and necessary to development of the minerals is a **Trespass**
- Surface Owner continues to enjoy all rights and benefits of proprietorship consistent with the burden of the easement
- Both Estates must exercise their rights in a manner consistent with the other (both estates are mutually dominant and mutually servient)
- This “due regard” concept requires the operator to accommodate the surface owner to the fullest extent possible
- The nature of the accommodation by the operator is fact driven based on the surface uses and on alternatives available to the operator
Trespass requires more than just inconvenience to the surface – there must be a material interference with the surface use.

Operator need not accommodate speculative, future uses of the Surface.

Operator well locations that were consistent with the lease, COGCC and County permits, state statutes and regulations were upheld.

Surface owner’s alternate well locations which would have required setback waivers from neighbors and directional drilling were not reasonable.
STATE AND LOCAL REGULATIONS

- State Regulations
  - COGCC Rule 318A
    - GWA 5-spot windows
    - 1 – 800’ x 800’ window per quarter section – in center of quarter section
    - 4 – 400’ x 400’ windows per quarter section – in center of quarter/quarter section
  - COGCC Rule 318A(e)
    - 3 infill/boundary wells per quarter section
    - Twinned 50’ from existing wells
    - Directionally drilled at operator’s expense
    - Water quality sampling
STATE AND LOCAL REGULATIONS

- State Regulations
  - COGCC Rules 603 and 604
    - Wells setback 150’ or 1 ½ times rig height from occupied building, public road, utility or railroad (1.6 acres lost)
    - Wells setback 150’ from surface property line
    - Tanks setback 2 diameters from property boundary
    - Tanks setback 75’ from wells and separators
    - At time of installation, tanks setback 200’ from residences, occupied buildings and occupied outside areas (2.9 acres lost)
    - High Density – 350’ from wellbores and tanks to building units, schools, assembly buildings and other buildings
    - Tanks and production equipment 350’ from building units (8.8 acres lost)
  - Rulemaking Underway for HB 1341 and HB 1298
    - New Permit Procedure
    - Long Range Planning on Regional Basis
    - Environmental and Wildlife Concerns
STATE AND LOCAL REGULATIONS

- Local Regulations

- 350 FEET (8.8 Acres Lost)
  - Thornton – 350’ setback from wells and production sites to occupied buildings
  - Erie
    - 150’ setback from existing wells and production sites to occupied buildings
    - 350’ setback from future wells and production sites to occupied buildings
  - No open space credit for developers
PRIOR BILL: H.B. 05-1219

- Expand duties of Operator before obtaining a permit to drill:
  - Negotiate in good faith with surface owner for a surface use agreement regarding, without limitation:
    - Location of facilities
    - Interim and final reclamation
    - Minimization of surface damages
  - Compensate surface owners for loss of value to surface resulting from mineral operations
  - Select an appraiser to value the surface if no agreement is reached
  - Arbitrate if agreement cannot be reached from the appraisal

- Operators’ view: Too much cost and delay to obtain permit; No prior legal requirement to pay any damages (other than crop damage) for use of surface or to go to arbitration

- Landowners/Developers’ view: Bill would level the playing field in surface use negotiations; Operators who never intend to drill and just shake down the developer for money will have less bargaining power
PRIOR BILL: H.B. 06-1185

- Legislative Declaration and COGCC’s Powers to Include Protection of the Interests of Surface Owners
- Drilling Permit Conditions: Surface Use Agreement or Written Settlement Offer for Surface Damages and $25,000 Bond
- Surface Use Agreement to Address:
  - Surface Resources
  - Water Rights and Quality
  - Reclamation
  - Payment for Surface Damages Caused by Oil and Gas Operation
- Surface Damages Based on Decrease in Fair Market Value Reasonably Expected to Result from Oil and Gas Operations
  - Loss of Agricultural Production and Income
PRIOR BILL: H.B. 06-1185

- Lost Land Value
- Lost Use of and Access to the Surface Owner’s Land
- Injury to Water Rights and Quality
- Damage to Personal Property
- Lost Value of Improvements

- Operator May Bond and Obtain the Drilling Permit if Offer Refused or Ignored for 30 Days
- Surface Owner May Commence Civil Action for Damages within 2 Years of Surface Damage
- Notice Under H.B. 1088 Changed – Notice Provided to Mineral Owners and Lessees Who Record a Request for Notification
  - Eliminates Need for Developers and Surface Owners Performing a Mineral Title Opinion
REVISION OF RULE 318A

- DRILLING WINDOWS UNDER PREVIOUS RULE ESTABLISHED JUNE 1, 1998

- 5 WELLS PER FORMATION IN 160 ACRES = 32-ACRE DENSITY
COGCC Rule 318A(e)
RULE 318Ae

- RULE 318Ae allows 8 wells per formation in 160 acres = 20-acre density.

- Surface impacts will be minimized. Bottom hole locations will be reached using directional drilling. New wells will “twin” existing wells in the drilling window unless a surface use agreement or waiver is obtained from a surface owner.
Improved Surface Utilization

- 5 Well Standard Safety Setback: 5 wells x 1.62 acres = 8.10 acres or 5% of 160 acres
- 8 Well Standard Safety Setback: 8.10 acres + (.35 acres x 3 new wells) = 9.15 acres or 5.7% of 160 acres
- New 318A Wells Increase Standard Safety Setback by 1.05 acres or .7% of 160 acres
NEW ACT: H.B. 07-1252

- Codifies Reasonable Accommodation Definition from Magness
- Operator is to Minimize Intrusion Upon and Damage to the Surface
- Select Alternative Locations for Wells, Roads, Pipelines or Production Facilities or Employing Alternative Means of Operation That Prevent, Reduce or Mitigate the Impacts of Oil & Gas Operations
- Alternatives Must Be Technologically Sound, Economically Practical and Reasonably Available to the Operator
NEW ACT: H.B. 07-1252

- An Operator May Not be Prevented from Using That Amount of Surface Reasonable and Necessary to Explore for, Develop and Produce Oil & Gas
- SUAs and Other Contractual Provisions and Leases may Address Surface Use
- Failure to Comply by Operator may be alleged as Civil Trespass Remedied by Compensatory Damages or Equitable Relief
- Surface Owner Must Show Operator’s Use Materially Interfered with Surface Use
NEW ACT: S.B. 07-237

- Compromise Legislation
- Notice under HB 1088 is Revised
  - Mineral Owners/Lessees must record request for notice specifying legal description of mineral interest
    - Section, Township, Range, Lots & Blocks
  - Examine recorded requests for notice and tax records
  - Notice – certified mail or overnight courier to mineral owners at least 30 days before initial public hearing on application
  - Application for Development
    - Sketch plan, preliminary or final plat, PUD, and land use change creating lot lines
- Encourage Negotiation of SUAs
NEW ACT: S.B. 07-237

- Qualified Surface Developments/160 Acres in GWA
  - Operational Aspects:
  - Developer Aspects: Conditions to land use application approval
    - Notice
    - SUA or statutory defaults on Plat for oil and gas operations
Greater Wattenberg Area “Five Spot” - COGCC Setbacks

LEGEND:
- JURISDICTIONAL DRILLING WIND\(\)
- 150′ RADIUS EXCLUSIVE USE ARE
- 150′ - 318A(e) EXCLUSIVE USE ARE
- 200′ RADIUS TANK SETBACK
- WELL LOCATION (50′ Offset Typ.)
- TANK LOCATION (75′ from Well Typ)
- 30′ FLOWLINE EASEMENT (Typ.)

Typical Qtr. Section (2,640′ x 2,640′)
NEW ACT: S.B. 07-237

- Create Default OGOAs that Reduce the Number of Vertical Drilling Sites and Surface Impacts
  - 1 to 2 Existing Wells: Access and Pipeline/Flowline Easements
    - OGOA: 600’ x 600’ window and 200’ radius around existing wells and tanks
    - Deposit for incremental directional drilling costs - $87,500 per well, up to 4 wells
    - 50’ landscape buffer
Wells Separators/Treaters Tanks
150' Circle
200' Circle
200' Circle
150' Circle
3 Well Location Diagram
513' x 519' (6.11 Acres)
12 Well Location Diagram
552' x 571' (7.24 Acres)
“Qualifying” Statutory Default (2 or Fewer Wells) - C.R.S. Sec. 24-65.5-103.5 (1)(a)(II)

NOTE:
The outer 50’ of any setback of 200’ or more may be used for utilities, roads, etc.

LEGEND:
- JURISDICTIONAL DRILLING WINDOW
- 200’ RADIUS EXCLUSIVE USE AREA
- 200’ - 318A(e) EXCLUSIVE USE AREA
- 200’ RADIUS TANK SETBACK
- WELL LOCATION (50’ Offset Typ.)
- TANK LOCATION (75’ from Well Typ.)
- 30’ FLOWLINE EASEMENT (Typ.)

Typical Qtr. Section (2,640’ x 2,640’)

Map showing the layout and use of the statutory default for qualifying a well with 2 or fewer wells, including setback guidelines and an example of a typical quarter section.
NEW ACT: S.B. 07-237

- Create Default OGOAs that Reduce the Number of Vertical Drilling Sites and Surface Impacts
  - 3 or More Existing Wells: Access and Pipeline/Flowline Easements
    - OGOA: 250’ radius around 1 existing well in each of 3 drilling windows and 200’ radius around existing wells and tanks
    - Deposit for incremental directional drilling costs - $87,500 per well, up to 4 wells
    - 50’ landscape buffer
“Qualifying” Statutory Default (3 or More Wells) - C.R.S. Sec. 24-65.5-103.5 (1)(a)(l)

NOTE:
The outer 50’ of any setback of 200’ or more may be used for utilities, roads, etc.

LEGEND:
- JURISDICTIONAL DRILLING WINDOW
- 200’ or 250’ RADIUS EXCLUSIVE USE AREA
- 150’ - 318A(e) EXCLUSIVE USE AREA
- 200’ RADIUS TANK SETBACK
- WELL LOCATION (50’ Offset Typ.)
- TANK LOCATION (75’ from Well Typ.)
- 30’ FLOWLINE EASEMENT (Typ.)
NEW ACT: S.B. 07-237

- Reduce the Number of Potential Directional Wells for which Incremental Costs Reimbursement is Required
- Directional Drilling Escrow Returned to Surface Owner if Not Used by Operator Within Four Years (3 years + permit period)
- Finance Directional Drilling Costs through Metropolitan District
SURFACE USE AGREEMENTS

- Ascertain the operators and all working interest owners – Parties to SUA
  - Developer who applies for a land use change must comply with H.B. 01-1088, as amended
“Example” Oil & Gas Operation Areas in a Surface Use Agreement

LEGEND:

- JURISDICTIONAL DRILLING WINDOW
- 200' RADIUS EXCLUSIVE USE AREA
- 200' - 318A(e) EXCLUSIVE USE AREA
- 200' RADIUS TANK SETBACK
- WELL LOCATION (50' Offset Typ.)
- TANK LOCATION (75' from Well Typ.)

Typical Qtr. Section (2,640' x 2,640')
SURFACE USE AGREEMENTS

- There may be different working interest owners for different formations (Sussex, Shannon, Niobrara, Codell, J-Sand, D-Sand, Dakota, Lyons)
- Access – location and dimensions of access to well site and surface equipment
- Operations areas – exclusive to Operator and specify setbacks; specify number and location of future wells
- Flowlines and pipe lines – specify easements and relocation provisions
- Payment – surface damages, relocation expenses and marginal cost of directional drilling
- Surface Release – The portion of the surface that will not be used by the Operator
- Covenant running with the land, successors and assigns, term and indemnification