

## Law & Accounting

# New oil, gas laws favor surface land owners, the environment

Three new laws significantly impact the oil and gas industry and surface owners. The new laws favor the environment and surface owners at the expense of the extraction industries. New regulations will follow next year so those with a stake in the outcome should let their opinion be known now.

■ **Accommodation.** House Bill 07-1252 provides that an oil and gas operator "shall conduct operations in a manner that accommodates the surface owner by minimizing the intrusion upon and damage to the surface of the land." "Minimizing intrusions" means selecting alternative locations for wells, roads, pipelines, or production facilities, or employing alternative means of operation that prevent, reduce or mitigate impacts on the surface where such alternatives are technologically sound, economically practicable and reasonably available to the operator.

Minimizing intrusions does not mean the operator is prevented from using an amount of the surface as is "reasonable and necessary." The standard of conduct in the new law does not change a surface use agreement binding on the parties or that releases the operator from liability for use of the surface.

An operator's failure to comply gives rise to a claim by the surface owner for damages or injunctive relief. An operator may assert as a defense that it complied with a regulatory requirement, contractual obligation, or land use plan provisions. The new law becomes effective to all oil and gas operations "commenced on or after" Sept. 1, 2007.

■ **COGCC membership and environmental protection.** HB-07-1341 law changes the membership of the Colorado Oil and Gas Conservation



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Commission by increasing the number of commissioners on the COGCC to nine, and decreasing industry representation to three members.

The law emphasizes environmental protection more in COGCC decision-making and de-emphasizes the desire to extract oil and gas at the expense of the environment. It also authorizes the COGCC to establish new regulations that are friendlier to the environment. Those with a stake in new regulations should get involved now.

**Senate Bill 07-237 requires a surface owner developer to send notice to a mineral owner who either 1) is a mineral owner in the county tax assessor's records, or 2) has filed in the county clerk and recorder's office a request for such notice.**

This also means that appeals taken to the COGCC by surface owners seeking to protect surface interests will likely get more

favorable responses, on average, from the COGCC than in the past.

■ **Developer's notice and default surface use agreements.** Senate Bill 07-237 requires a surface owner developer to send notice to a mineral owner who either 1) is a mineral owner in the county tax assessor's records, or 2) has filed in the county clerk and recorder's office a request for such notice. The change allows surface owners to identify mineral owners without a full mineral title search.

The new law also provides a default surface use agreement (SUA) if the surface and mineral owners cannot agree to one. In the absence of an SUA, default drilling windows and setbacks in a plat are provided so that a developer may proceed with development even if the mineral owner does not agree with the oil and gas locations. This law affects surface developments covering approximately 160 acres or more.

Surface owners may be required to deposit funds for incremental drilling costs if directional wells are necessary under the plat. The costs are less than typically sought by the oil and gas industry in private negotiations. The mineral owner may only draw on the deposit for actual funds expended, up to the amount of the deposit. If the deposit is not used by the mineral owner within three years (subject to a one-year extension), the money is returned to the surface owner.

The new laws favor surface owners, surface developers, and the environment. Interested parties should review the new laws, review existing surface use agreements, and get involved in the process creating the new regulations, which are due in early 2008.▲