

WORKING DRAFT

HOUSE BILL NO. _____

Split estate-procedures for oil and gas operations.

Sponsored by: HDRAFT

A BILL

For

1 AN ACT relating to oil and gas operations; establishing
2 requirements prior to commencing oil and gas operations on
3 split estates; providing an exception; requiring notice,
4 good faith negotiation and surface owner agreements or
5 financial assurances, as specified; authorizing
6 compensation to surface owners for loss due to oil and gas
7 development; providing definitions; providing a statute of
8 limitations; specifying applicability of the act; and
9 providing for an effective date.

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11 *Be It Enacted by the Legislature of the State of Wyoming:*

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13 **Section 1.** W.S. 30-5-401 through 30-5-408 are created

14 to read:

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ARTICLE 4

ENTRY TO DRILL

30-5-401. Definitions.

(a) As used in this act:

(i) "Agricultural production" means the production of any growing grass, crops or trees attached to the surface of the land or the raising of farm animals with commercial value;

(ii) "Oil" and "gas" mean as defined in W.S. 30-5-101(a)(vii);

(iii) "Oil and gas operations" means the surface disturbing activities associated with drilling, producing and transporting oil and gas, including the full range of development activity from exploration through production and reclamation of the disturbed surface;

(iv) "Oil and gas operator" means a person engaged in oil and gas operations, his designated agents, contractors and representatives;

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2 (v) "Surety bond or other guaranty" means as
3 defined in W.S. 30-5-101(a)(x),

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5 (vi) "Surface owner" means any person who owns
6 an interest of record in the surface estate of the land on
7 which oil and gas operations occur, as identified by the
8 records of the county clerk of the county in which the land
9 is located. "Surface owner" does not include the state of
10 Wyoming when the state holds record title to all of the
11 surface estate and all of the underlying mineral estate;

12

13 (vii) "Tract of land" means a parcel of a
14 surface owner's land within six hundred and sixty (660)
15 feet of a well or production facility, measured from the
16 center point of each well or production facility, or within
17 twenty-five (25) feet from the centerline of a right of
18 way, together with any other lands under the same ownership
19 that are physically disturbed in the conduct of oil and gas
20 operations;

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22 (viii) "This act" means W.S. 30-5-401 through
23 30-5-408.

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*****Staff Comment*****

1 The definitions are adopted from the Surface
2 Owner Coordination Act (SOCA) proposed by the
3 Wyoming Split Estate Initiative, except for the
4 definition of "agricultural production" which
5 comes from the Montana Law and "surety bond..."
6 which cross references existing Wyoming law. The
7 definition of "surface owner" includes an
8 exception for lands held as a unified estate by
9 the state, to address a concern expressed by
10 Lynne Boomgaarden. The exclusion was part of the
11 definition in 04HB0070.
12

13 **30-5-402. Entry upon land to survey or drill; notice;**
14 **process; surety bond or other guaranty; definitions.**
15

16 (a) Any oil and gas operator having the right to any
17 oil or gas underlying the surface of land may locate and
18 enter the land to remove the oil or gas underlying the
19 surface of that land and shall have the right at all times
20 to enter upon the land for non-surface disturbing
21 activities to determine the feasibility and location of oil
22 and gas operations to extract the oil and gas thereunder,
23 provided he shall first comply with the provisions of this
24 act and shall be liable to the person who owns an interest
25 of record in the surface estate of the land upon which the
26 oil and gas operations are to occur and shall compensate
27 for any damage that results from the non-surface disturbing
28 activities or oil and gas operations. The oil and gas
29 operator may reenter and occupy so much of the surface of

1 the land thereof as may be required for all purposes
2 reasonable and necessary to conduct oil and gas operations
3 on the land.

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*****Staff Comment*****

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**Subsection (a) is adapted from the BLM
7 regulations, 43 C.F.R. 3814.1(b) & (c), and the
8 BLM Instruction Memorandum No. 2003-131**

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10 (b) An oil and gas operator may enter to conduct non-
11 surface disturbing activities, including inspections,
12 staking, surveys, measurements and general evaluation of
13 proposed routes and sites for oil and gas operations.
14 Prior to initial entry upon the land for non-surface
15 disturbing activities, the oil and gas operator shall
16 provide at least five (5) days notice to the surface owner.
17 Prior to any subsequent entry upon the land for non-surface
18 disturbing activities, the oil and gas operator shall
19 provide notice to the surface owner prior to entry.

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*****Staff Comment*****

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**This subsection is adapted from the SOCA, W.S.
23 30-5-403(a)**

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1 (c) Entry upon the land for oil and gas operations
2 shall be conditioned on the oil and gas operator providing
3 the required notice, attempting good faith negotiations
4 and:

5

6 (i) Securing the written consent or waiver of
7 the surface owner for entry;

8

9 (ii) Payment of actual and anticipated damages
10 to the surface owner under an agreement; or

11

12 (iii) In lieu of complying with both paragraphs
13 (i) and (ii) of this subsection, executing a good and
14 sufficient surety bond or other guaranty to the Wyoming oil
15 and gas conservation commission for the use and benefit of
16 the surface owner, to secure payment of damages. The
17 amount of the bond shall be determined pursuant to W.S. 30-
18 5-404.

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*****Staff Comment*****

21 **The subsection is adapted from the BLM**
22 **regulations, 43 C.F.R. 3814.1(b) & (c), and the**
23 **BLM Instruction Memorandum No. 2003-131.**

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1 (d) Before entering upon the land for oil or gas
2 operations, the oil and gas operator shall give to all the
3 surface owners a written notice of its proposed oil and gas
4 operations on the land. This notice shall be given to the
5 surface owners at the address shown by the records of the
6 county where the land is located at the time notice is
7 given.

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*****Staff Comment*****

10 **This subsection is adapted from the SOCA proposed**
11 **by the Split Estate Initiative**

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14 (e) The notice of proposed oil and gas operations
15 shall sufficiently disclose the plan of work and operations
16 to enable the surface owner to evaluate the effect of oil
17 and gas operations on the surface owner's use of the land.
18 The notice shall be given no more than ninety (90) days nor
19 less than twenty (20) days before commencement of any oil
20 and gas operations on the land. The notice shall include,
21 but is not limited to:

22

23 (i) The proposed dates on which planned
24 operations shall commence;

25

1 (ii) To the extent reasonably known at the time,
2 the proposed facility locations and access routes related
3 to the proposed oil and gas operations, including locations
4 of roads, wells, well pads, seismic locations, pits,
5 reservoirs, power lines, pipelines, compressor pads, tank
6 batteries and other facilities;

7
8 (iii) The name, address, telephone number and,
9 if available, facsimile number and electronic mail address
10 of the oil and gas operator and his designee, if any;

11
12 (iv) An offer to discuss with the surface owner
13 the proposed plan of work and oil and gas operations prior
14 to commencement of oil and gas operations.

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16 *****Staff Comment*****

17 **The first two sentences of the introductory**
18 **paragraph of this subsection are adapted from the**
19 **Montana law. The balance of the subsection is**
20 **adapted from the BLM Instruction Memorandum No.**
21 **2003-131**

22
23 (f) After providing the notice of proposed oil and
24 gas operations to the surface owner, the oil and gas
25 operator and the surface owner shall attempt good faith
26 negotiations to reach a surface owner agreement for the

1 protection of the surface resources, reclamation of the
2 disturbed areas and payment of damages to the land incurred
3 by the surface owner by the oil and gas operations. At any
4 time in the negotiation, at the request of either party and
5 upon mutual agreement, dispute resolution processes
6 including mediation, arbitration or the informal procedures
7 for resolving disputes established under article 6 of the
8 Wyoming Eminent Domain Act may be employed.

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*****Staff Comment*****

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**This subsection was adapted from the BLM
Instruction Memorandum No. 2003-131, the
Committee's instruction to require good faith
negotiations and from the proposed W.S. 30-5-
404(a) in SOCA, with the addition of reference to
the Eminent Domain Act.**

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**30-5-403. Application for drilling permit; additional
notice; negotiations.**

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(a) When submitting an application to the oil and gas
conservation commission for a permit to drill, the oil and
gas operator shall certify in a statement filed with the
commission that notice of proposed oil and gas operations
was provided to the surface owner and whether the parties
attempted good faith negotiations as required under W.S.

1 30-5-402(f) to reach a surface owner agreement. The
2 statement shall include the surface owner's name, contact
3 address, telephone number and any other relevant and
4 necessary contact information known to the oil and gas
5 operator. The statement by the oil and gas operator shall
6 include whether he has obtained one (1) of the following:

7

8 (i) An executed surface owner agreement for
9 access to the land;

10

11 (ii) A written waiver from the surface owner for
12 access to the land;

13

14 (iii) An agreement regarding compensation to the
15 surface owner for damages to the land; or

16

17 (iv) A surety bond or other guaranty as provided
18 in W.S. 30-5-402(c)(iii).

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*****Staff Comment*****

21

**This subsection is adapted from the BLM
22 Instruction Memorandum No. 2003-131**

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(b) The surface owner agreement between the oil and
gas operator and the surface owner shall not be filed with

1 the oil and gas conservation commission and the terms of
2 the agreement shall not be required as a condition of
3 approval of an application for a permit to drill.

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*****Staff Comment*****

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This subsection is adapted from the BLM

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Instruction Memorandum No. 2003-131

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9 (c) The oil and gas operator shall not engage in
10 work, location of facilities and access routes or
11 operations substantially and materially different from
12 those disclosed to the surface owner in accordance with
13 this section, without first providing additional notice
14 disclosing proposed changes in the plan of work and oil and
15 gas operations and scheduling a meeting to comply with the
16 requirements of W.S. 30-5-402(f).

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*****Staff Comment*****

19

The subsection is adapted from the BLM

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requirement for sundry notices (SN)

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30-5-404. Surety bond or guaranty; approval;

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objections; release of surety bond.

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1 (a) The surety bond or other guaranty required under
2 W.S. 30-5-402(c)(iii) shall be executed by the oil and gas
3 operator, as principal, with two (2) competent individual
4 sureties, or a bonding company acceptable to the oil and
5 gas conservation commission. Qualified corporate sureties
6 may be accepted as the sole surety. Other forms of
7 guaranty acceptable by the commission under article 1 of
8 this chapter may be submitted by the oil and gas operator
9 in lieu of a surety bond.

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*****Staff Comment*****

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**This subsection is adapted from the regulations,
43 C.F.R. 3814.1(b) & (c), and the BLM
Instruction Memorandum No. 2003-131**

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*****Staff Comment*****

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**This subsection is adapted from the BLM
regulations, 43 C.F.R. 3814.1(c), and the BLM
Instruction Memorandum No. 2003-131, but has been
increased from \$1,000 in the federal regulations
to \$3,000 to account for inflation. The amount
specified is arbitrary.**

1 (c) The oil and gas conservation commission shall
2 notify the surface owner of receipt of the surety bond or
3 guaranty. If at the expiration of thirty (30) days after
4 receipt of the notice by the surface owner, he makes no
5 objection to the amount of the surety bond or guaranty, the
6 commission shall approve the surety bond or guaranty. If
7 the surface owner objects to the amount of the surety bond
8 or guaranty, the commission shall give immediate
9 consideration to the surety bond or guaranty and
10 accompanying papers filed by the oil and gas operator in
11 support of the surety bond or guaranty amount, shall render
12 a final decision as to the acceptability of the amount of
13 the surety bond or guaranty and shall notify the parties of
14 the decision. Any aggrieved party may contest the final
15 decision of the commission in accordance with the contested
16 case procedures of the Wyoming Administrative Procedure
17 Act.

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*****Staff Comment*****

20 **The procedures in this subsection are adapted**
21 **from the BLM regulations, 43 C.F.R. 3814.1(c) and**
22 **the BLM Instruction Memorandum No. 2003-131**
23

24 (d) Upon agreement of all parties, payment of damages
25 or final resolution of the judicial appeal process for any

1 action for damages, the commission shall immediately
2 release the surety bond or other guaranty.

3 *****Staff Comment*****

4 **The procedures in this subsection are adapted**
5 **from the BLM regulations, 43 C.F.R. 3814.1(c) and**
6 **the BLM Instruction Memorandum No. 2003-131**
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8

9 (e) Any surety bond or guaranty executed under this
10 section shall be in addition to the surety bond or guaranty
11 required under W.S. 30-5-104(d)(i)(D).
12

13 *****Staff Comment*****

14 **This subsection is modeled after the BLM rule at**
15 **C.R.F. 3814.1 and adapted to reflect that a**
16 **surety bond is required for reclamation purposes**
17 **under Wyoming law, similar to federal**
18 **requirements, but which is different from the**
19 **bond proposed in this bill for damages to the**
20 **surface owner's property interests.**
21
22

23 **30-5-405. Surface damage and disruption payments;**
24 **penalty for late payment.**
25

26 (a) The oil and gas operator shall pay the surface
27 owner as follows:
28

29 (i) A sum of money or other compensation equal
30 to the amount of damages sustained by the surface owner for
31 loss of agricultural production and income, lost land value

1 and lost value of improvements caused by oil and gas
2 operations;

3

4 (ii) The amount of damages may be determined by
5 any formula mutually agreeable to the surface owner and the
6 oil and gas operator. When determining damages,
7 consideration shall be given to the period of time during
8 which the loss occurs;

9

10 (iii) The surface owner may elect to receive
11 annual damage payments over a period of time, except that
12 the surface owner shall be compensated by a single sum
13 payment for harm caused by exploration only;

14

15 (iv) The payments contemplated by this
16 subsection shall only cover land directly affected by oil
17 and gas operations. Payments under this subsection are
18 intended to compensate the surface owner for damage and
19 disruption. No person shall reserve or assign that
20 compensation apart from the surface estate except to a
21 tenant of the surface estate.

22

23 (b) An oil and gas operator who fails to timely pay
24 an installment under any annual damage agreement negotiated

1 with a surface owner is liable for payment to the surface
2 owner of twice the amount of the unpaid installment if the
3 installment payment is not paid within sixty (60) days of
4 receipt of notice of failure to pay from the surface owner.

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*****Staff Comment*****

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**This entire section is adapted from the Montana
8 law, 82-10-504.**

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30-5-406. Remedies cumulative.

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13 The remedies provided by this act do not preclude any
14 person from seeking other remedies allowed by law, nor does
15 this act diminish rights previously granted by law or
16 contract.

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30-5-407. Waiver.

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20 A surface owner may waive any rights afforded under this
21 act by providing a written waiver of rights to the oil and
22 gas operator, identifying which rights have been waived.

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*****Staff Comment*****

1 **The waiver is adapted from both the SOCA and**
 2 **04HB070.**
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5 **30-5-408. Statute of limitations for civil action;**
 6 **notice of damages to oil and gas operator.**
 7

8 A surface owner entitled to bring an action for damages
 9 under this act, or to seek any other remedy at law for
 10 damages caused by oil and gas operations, shall bring such
 11 action within two (2) years after the damage has been
 12 discovered, or should have been discovered through due
 13 diligence, by the surface owner.
 14

15 *****Staff Comment*****

16 **The statute of limitation is adapted from**
 17 **04HB0070**
 18

19

20 **Section 2.** Any written surface owner agreement or
 21 consent in effect prior to the effective date of this act
 22 shall not be subject to the provisions of this act.
 23

24 *****Staff Comment*****

25 **The applicability provision is adapted from both**
 26 **the SOCA and 04HB0070**
 27

1 **Section 3.** This act is effective July 1, 2005.

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3

(END)