

**WORKING DRAFT**

1 HOUSE BILL NO.

2 Split estate-procedures for oil and gas operations.

3 Sponsored by: HDRAFT

4 A BILL

5 For

6  
7 AN ACT relating to oil and gas operations; establishing  
8 requirements prior to commencing oil and gas operations on  
9 split estates; providing an exception; requiring notice,  
10 good faith negotiation and surface use agreements or  
11 financial assurances, as specified; authorizing  
12 compensation to surface owners for loss due to oil and gas  
13 operations; providing definitions; providing a statute of  
14 limitations; specifying applicability of the act; and  
15 providing for an effective date.

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

17 **The highlighted term "use" appears in several**  
18 **places within the bill and reflects a global**  
19 **change from "surface owner agreement" to "surface**  
20 **use agreement". Throughout the bill, language**  
21 **that is highlighted denotes changes discussed by**  
22 **the committee at the September 20<sup>th</sup> meeting, and**  
23 **language that is underscored or stricken reflects**  
24 **changes made after the meeting in consultation**  
25 **with Cochairman Simpson.**  
26

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

2

3 **Section 1.** W.S. 30-5-401 through 30-5-409 are created

4 to read:

5

ARTICLE 4

6

ENTRY TO CONDUCT OIL AND GAS OPERATIONS

7

**\*\*\*Staff Comment\*\*\***

8 Changes made as a result of the September 20  
9 meeting will be highlighted as shown in the  
10 article title. Throughout the bill, "drill" has  
11 been replaced with "conduct oil and gas  
12 operations," except in the definition of oil and  
13 gas operations in W.S. 30-5-410(a)(iii).  
14

15 **30-5-401. Definitions.**

16

17 (a) As used in this act:

18

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

23

24 (ii) "Compensate" and "compensation" mean  
25 monetary payment or the furnishing of materials, labor or  
26 equipment for the purpose of constructing improvements to  
27 the land and facilities of the surface owner;

1

2 (iii) "Oil" and "gas" mean as defined in W.S.  
3 30-5-101(a) (vii);

4

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

10

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

14

15 (vi) "Reclamation" means the restoring of the  
16 surface directly affected by oil and gas operations, as  
17 closely as reasonably practicable, to the condition that  
18 existed prior to oil and gas operations, or as otherwise  
19 agreed to in writing by the oil and gas operator and the  
20 surface owner;

21

**\*\*\*Staff Comment\*\*\***

22 **The preceding definition was adopted by the**  
23 **Committee. Source: Laurie Goodman**

24

1           (vii) "Surety bond or other guaranty" means as  
2 defined in W.S. 30-5-101(a)(x);

3

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

11

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

20

21           (x) "This act" means W.S. 30-5-401 through 30-  
22 5-409.

23

**\*\*\*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  
14      30-5-402. Entry upon land for oil and gas operations  
15      and non-surface disturbing activities; notice; process;  
16      surety bond or other guaranty; definitions.

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

1 results from the non-surface disturbing activities or oil  
2 and gas operations and shall reasonably accommodate  
3 existing surface uses. The oil and gas operator may  
4 reenter and occupy so much of the surface of the land  
5 thereof as may be required for all purposes reasonable and  
6 necessary to conduct oil and gas operations on the land.

7 **\*\*\*Staff Comment\*\*\***

8 **Subsection (a) is adapted from the BLM**  
9 **regulations, 43 C.F.R. 3814.1(b) & (c), and the**  
10 **BLM Instruction Memorandum No. 2003-131**  
11  
12

13 (b) An oil and gas operator may enter to conduct non-  
14 surface disturbing activities, including inspections,  
15 staking, surveys, measurements and general evaluation of  
16 proposed routes and sites for oil and gas operations.  
17 Prior to initial entry upon the land for non-surface  
18 disturbing activities, the oil and gas operator shall  
19 provide at least five (5) days notice to the surface owner.  
20 Prior to any subsequent entry upon the land for non-surface  
21 disturbing activities not previously discussed, the oil and  
22 gas operator shall provide notice to the surface owner  
23 prior to entry.

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

25 **This subsection is adapted from the SOCA, W.S.**  
26 **30-5-403(a)**  
27  
28

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 onto the land for oil and gas  
8 operations;

9  
10 (ii) An executed surface use agreement regarding  
11 providing for access to the land and compensation to the  
12 surface owner for damages to the land and improvements as  
13 provided in W.S. 30-5-405(a);

14  
15 (iii) Securing a waiver as provided in W.S. 30-  
16 5-408; or

17  
18 (iv) In lieu of complying with paragraph (i)  
19 (or) (ii) of this subsection, executing a good and  
20 sufficient surety bond or other guaranty to the Wyoming oil  
21 and gas conservation commission for the use and benefit of  
22 the surface owner to secure payment of damages. The amount  
23 of the bond or other guaranty shall be determined pursuant  
24 to W.S. 30-5-404.

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**\*\*\*Staff Comment\*\*\***

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

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

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**\*\*\*Staff Comment\*\*\***

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

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(e) The notice of proposed oil and gas operations shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of oil and gas operations on the surface owner's use of the land. The notice shall be given no more than **one hundred twenty** **(120)** days nor less than **thirty** **(30)** days before commencement of any oil and gas operations on the land. The notice shall include, but is not limited to:

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(i) The proposed dates on which planned



1 operations shall commence;

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

9

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

13

14 (iv) An offer to discuss and negotiate in good  
15 faith any changes either party may recommend in the  
16 proposed plan of work and oil and gas operations prior to  
17 commencement of oil and gas operations;

18

19 (v) A copy of this act.

20

**\*\*\*Staff Comment\*\*\***

21 **The first two sentences of the introductory**  
22 **paragraph of this subsection are adapted from the**  
23 **Montana law. The balance of the subsection is**  
24 **adapted from the BLM Instruction Memorandum No.**  
25 **2003-131**

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27

1 (f) After providing the notice of proposed oil and  
2 gas operations to the surface owner, the oil and gas  
3 operator and the surface owner shall attempt good faith  
4 negotiations to reach a surface **use** agreement for the  
5 protection of the surface resources, and timely completion  
6 of reclamation of the disturbed areas and payment of  
7 damages to the land incurred by the surface owner by the  
8 oil and gas operations. At any time in the negotiation, at  
9 the request of either party and upon mutual agreement,  
10 dispute resolution processes including mediation,  
11 arbitration or the informal procedures for resolving  
12 disputes established under article 6 of the Wyoming Eminent  
13 Domain Act may be employed.

14

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**\*\*\*Staff Comment\*\*\***

16 This subsection was adapted from the BLM  
17 Instruction Memorandum No. 2003-131, the  
18 Committee's instruction to require good faith  
19 negotiations and from the proposed W.S. 30-5-  
20 404(a) in SOCA, with the addition of reference to  
21 the Eminent Domain Act.

22

23 **30-5-403. Application for permit drill; additional**  
24 **notice; negotiations.**

25

26 (a) When submitting an application to the oil and gas  
27 conservation commission for a permit to drill, the oil and

1 gas operator shall certify in a statement filed with the  
2 commission that notice of proposed oil and gas operations  
3 was provided to the surface owner and **that** the parties  
4 attempted good faith negotiations as required under W.S.  
5 30-5-402(f) to reach a surface **use** agreement. The  
6 statement shall include the surface owner's name, contact  
7 address, telephone number and any other relevant and  
8 necessary contact information known to the oil and gas  
9 operator. The statement by the oil and gas operator shall  
10 include whether he has obtained one (1) of the following:

11

12 (i) **A written consent or waiver from the surface**  
13 **owner for entry onto the land** for oil and gas operations;

14

15 (ii) **An executed surface use agreement** regarding  
16 providing for access to the land by the oil and gas  
17 operator and **compensation to the surface owner for damages**  
18 **to the land** and improvements as provided in W.S. 30-5-  
19 405(a); **or**

20

21 (iii) Securing a waiver as provided in W.S. 30-  
22 5-408;

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

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**\*\*\*Staff Comment\*\*\***

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**\*\*\*Staff Comment\*\*\***

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This subsection is adapted from the BLM Instruction Memorandum No. 2003-131. The subsection previously contained paragraphs (i)-(iv), but (i) and (ii) were combined to mirror W.S. 30-5-402(b)(i); subsequent paragraphs were amended and renumbered as indicated, as discussion with the cochairmen.

(b) Upon receipt of an acceptable surety bond or other guaranty by the oil and gas conservation commission, and receipt of all required regulatory approvals, the oil and gas operator shall be permitted entry upon the land to conduct oil and gas operations in accordance with terms of any existing contractual or legal right.

(c) The surface use agreement between the oil and gas operator and the surface owner shall not be filed with the oil and gas conservation commission and the terms of the agreement shall not be required as a condition of approval of an application for a permit to conduct oil and gas operations.

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**\*\*\*Staff Comment\*\*\***

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

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

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**\*\*\*Staff Comment\*\*\***

**The subsection is adapted from the BLM  
requirement for sundry notices (SN)**

**30-5-404. Surety bond or guaranty; approval;  
objections; release of surety bond or guaranty.**

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1 this chapter may be submitted by the oil and gas operator  
2 in lieu of a surety bond.

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

4 This subsection is adapted from the regulations,  
5 43 C.F.R. 3814.1(b) & (c), and the BLM  
6 Instruction Memorandum No. 2003-131. The  
7 language shown as stricken will be deleted from  
8 the bill if the changes are adopted by the  
9 committee. Current Commission rules address in  
10 comprehensive detail what forms of bonds or other  
11 financial assurances are acceptable to the  
12 Commission.

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14  
15 (b) The surety bond or other guaranty shall be in an  
16 amount of not less than three thousand dollars (\$3,000.00)  
17 per well site on the land. In the alternative, the  
18 commission may accept a blanket bond in an amount not less  
19 than seventy-five thousand dollars (\$75,000.00) covering  
20 all wells drilled in the state by an oil and gas operator.

21 **\*\*\*Staff Comment\*\*\***

22 This subsection is adapted from the BLM  
23 regulations, 43 C.F.R. 3814.1(c), and the BLM  
24 Instruction Memorandum No. 2003-131, but has been  
25 increased from \$1,000 in the federal regulations  
26 to \$3,000 to account for inflation. That amount  
27 specified is arbitrary. The underscored  
28 language, including the amount of the blanket  
29 bond, is adapted from the Commission's current  
30 rules.

31  
32  
33 (c) The oil and gas conservation commission shall  
34 notify the surface owner of receipt of the surety bond or  
35 other acceptable guaranty, including a description of the

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

21 **\*\*\*Staff Comment\*\*\***

22 **The procedures in this subsection are adapted**  
23 **from the BLM regulations, 43 C.F.R. 3814.1(c) and**  
24 **the BLM Instruction Memorandum No. 2003-131. The**  
25 **underscored language was added to allow appeal of**

1 the type or surety bond or other guaranty that is  
2 submitted to the Commission.  
3  
4

5 (d) Upon agreement of all parties, payment of all  
6 damages or final resolution of the judicial appeal process  
7 for any action for damages and all damages ordered have  
8 been paid, the commission shall immediately release the oil  
9 and gas operator from any payment obligation to the surface  
10 owner for lands affected under the surety bond, other  
11 guaranty or blanket bond, as applicable.

12 **\*\*\*Staff Comment\*\*\***

13 The procedures in this subsection are adapted  
14 from the BLM regulations, 43 C.F.R. 3814.1(c) and  
15 the BLM Instruction Memorandum No. 2003-131.  
16

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

20 **\*\*\*Staff Comment\*\*\***

21 This subsection is modeled after the BLM rule at  
22 C.F.R. 3814.1 and adapted to reflect that a  
23 surety bond is required for reclamation purposes  
24 under Wyoming law, similar to federal  
25 requirements, but which is different from the  
26 bond proposed in this bill for damages to the  
27 surface owner's property interests.  
28  
29

30 30-5-405. Surface damage and disruption payments; penalty  
31 for late payment.  
32



1 (a) The oil and gas operator shall pay the surface  
2 owner as follows:

3

4 (i) A sum of money or other compensation equal  
5 to the amount of damages sustained by the surface owner for  
6 loss of production and income, lost land value and lost  
7 value of improvements caused by oil and gas operations;

8

**\*\*\*Staff Comment\*\*\***

9 **The term "agricultural" preceding "production" in**  
10 **paragraph (i) was deleted.**  
11  
12

13 (ii) The amount of damages and method of  
14 compensation may be determined ~~by~~in any ~~formula~~manner  
15 mutually agreeable to the surface owner and the oil and gas  
16 operator. When determining damages, consideration shall be  
17 given to the period of time during which the loss occurs;

18

19 ~~(iii) The surface owner may elect to receive~~  
20 ~~annual damage payments over a period of time, except that~~  
21 ~~the surface owner shall be compensated by a single sum~~  
22 ~~payment for damages caused by non-surface disturbing~~  
23 ~~activities only;~~

24

25 ~~(iviii)~~ The payments contemplated by this

1 subsection shall only cover land directly affected by oil  
2 and gas operations. Payments under this subsection are  
3 intended to compensate the surface owner for damage and  
4 disruption. No person shall reserve or assign that  
5 compensation apart from the surface estate except to a  
6 tenant of the surface estate.

7

8 (b) An oil and gas operator who fails to timely pay  
9 an installment under any annual damage agreement negotiated  
10 with a surface owner is liable for payment to the surface  
11 owner of twice the amount of the unpaid installment if the  
12 installment payment is not paid within sixty (60) days of  
13 receipt of notice of failure to pay from the surface owner.

14

**\*\*\*Staff Comment\*\*\***

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

17

18 30-5-406. Surface damage negotiations; notice of  
19 damages to oil and gas operator; right to bring action.

20

21 (a) If the oil and gas operator has commenced oil and  
22 gas operations in the absence of any agreement for  
23 compensation for all damages, a surface owner shall give  
24 written notice to the oil and gas operator of the damages  
25 sustained by the surface owner within two (2) years after

1 the damage has been discovered, or should have been  
2 discovered through due diligence, by the surface owner.

3  
4 **\*\*\*Staff Comment\*\*\***

5 **The preceding subsection is adapted from the**  
6 **Montana code, M.C.A.82-10-506. The language with**  
7 **respect to the statute of limitations and**  
8 **discovery is consistent with the language in W.S.**  
9 **30-5-409**

10  
11 (b) Unless both parties provide otherwise by written  
12 agreement, within sixty (60) days after the oil and gas  
13 operator receives notice of damages pursuant to subsection  
14 (a) of this section, the oil and gas operator shall make a  
15 written offer of settlement to the surface owner as  
16 compensation for damages. The surface owner seeking  
17 compensation for damages under this section may accept or  
18 reject any offer made by the oil and gas operator.

19 **\*\*\*Staff Comment\*\*\***

20 **The preceding subsection is adapted from the**  
21 **Montana code, M.C.A.82-10-507.**  
22

23 (c) If the surface owner who submits a notice as  
24 required under subsection (a) of this section receives no  
25 reply to his notice, receives a written rejection or  
26 counter offer or rejects an offer or counter offer from the  
27 oil and gas operator, the surface owner may bring an action

1 for compensation for damages in the district court in the  
2 county where the damage was sustained.

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

4 **The preceding subsection was adapted from the**  
5 **Montana code, M.C.A.82-10-508.**  
6

7 **30-5-407. Remedies cumulative.**

8  
9 The remedies provided by this act do not preclude any  
10 person from seeking other remedies allowed by law, nor does  
11 this act diminish rights previously granted by law or  
12 contract.

13  
14 **30-5-408. Waiver.**

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

18 **\*\*\*Staff Comment\*\*\***

19 **The waiver is adapted from both the SOCA and**  
20 **04HB070.**  
21

22 **30-5-409. Statute of limitations for civil action.**

23  
24 A surface owner entitled to bring an action for damages  
25 under this act, or to seek any other remedy at law for

1 damages caused by oil and gas operations, shall bring such  
2 action within two (2) years after the damage has been  
3 discovered, or should have been discovered through due  
4 diligence, by the surface owner. The limitation on  
5 bringing an action under this section shall be tolled for a  
6 period of four (4) months, if a written demand for  
7 compensation for damages is timely submitted by the surface  
8 owner under W.S. 30-5-406.

9 **\*\*\*Staff Comment\*\*\***

10 **The statute of limitation is adapted from**  
11 **04HB0070. The underscored language was added to**  
12 **account for the new section, W.S. 30-5-406.**  
13

14 **Section 2.** Any written surface use agreement or  
15 consent in effect prior to the effective date of this act  
16 shall not be subject to the provisions of this act.

17 **\*\*\*Staff Comment\*\*\***

18 **The applicability provision is adapted from both**  
19 **the SOCA and 04HB0070**  
20

21 **Section 3.** This act is effective July 1, 2005.  
22

23 (END)