

Mixing Surface Development with Oil and Gas Operations—Part I

by Polly Jessen and Carleton Ekberg

Part I of this article outlines an oil and gas operator's rights to use the surface estate, associated environmental and operational effects on surface development, and the potential liabilities of the surface owner or developer related to those impacts. Part II, to be published in the June 2005 issue, will discuss the obligations of the oil and gas operator related to those impacts and steps a surface owner or developer may take to limit potential liability.

As commercial and residential development fans out along the Front Range, developers increasingly encounter prospective sites where mineral interests have been severed from the surface estate or where mineral interests have been leased.¹ At these sites, abandoned or active oil and gas wells and other infrastructure may be present or future oil and gas development is a possibility. Once a well has been located, ongoing oil and gas development and production may have operational and environmental impacts that adversely affect planned development and could result in liability to a surface developer. Historical oil and gas operations also may have resulted in environmental contamination.

A recent news story highlights the significance of failing to account for severed or leased mineral interests in development planning. In this story, the mineral interest lessee objected to the compensation for surface use and environmental protections requested by the surface owner as a condition of access.² Therefore, within its legal rights under Colorado law, the lessee simply posted a nominal surface damage bond with the Colorado Oil and Gas Conservation Commission ("Commission" or "COGCC")³ and began drilling within several hundred feet of a residence without a surface access agreement.⁴

In evaluating the viability of developing a parcel with leased or severed mineral interests for commercial and residential uses, the developer and its legal counsel

need to understand and weigh the answers to the following five questions, all of which are addressed in this article:

1. What are the rights of a mineral interest owner to use the surface estate?
2. What are the potential environmental and operational impacts of oil and gas extraction activities on surrounding surface development?
3. What are the legal obligations and potential liabilities of a surface owner locating residential and commercial development near an oil and gas well site?
4. What are the legal obligations of the mineral interest lessee and/or well operator to address environmental contamination and accommodate surface development?
5. What steps can a surface owner or developer take to limit potential li-

bility associated with the environmental and operational impacts of oil and gas operations?

The regulatory requirements and common-law legal obligations imposed on the oil and gas lessee and its operator in Colorado may provide some protection to a surface owner or developer from the adverse environmental and operational impacts of oil and gas development. In addition, a surface developer may be able to take a number of steps as it plans and implements development to limit its liability related to ongoing oil and gas operations on the site.

Part I of this article discusses the rights of the mineral interest owner or lessee to the surface estate in developing its interests, possible environmental and operational impacts of oil and gas operations, and the potential liabilities of the surface owner. Part II, which will be published in

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the June 2005 issue of *The Colorado Lawyer*, discusses the obligations of the mineral lessee or operator related to those impacts. Also addressed in Part II are the steps a surface owner or developer may take to limit potential liability. This article will be of interest to natural resources, real estate, environmental, and business attorneys representing mineral and surface estate owners and developers, lenders, insurers, and other parties who are involved in real property development projects where surface and mineral estates are severed.

RIGHTS OF THE MINERAL INTEREST OWNER OR LESSEE

As a general matter, Colorado law provides that mineral interest owners have a right to "reasonable use" of the surface estate to access and develop the mineral interests without compensation to the surface owner.⁵ This right includes the rights of ingress, egress, exploration, and surface usage as reasonably necessary to the successful exploitation of the mineral interests.⁶

In the development of the mineral estate, the Colorado Oil and Gas Conservation Act ("Conservation Act" or "Act")⁷ is the primary source of regulation. The Conservation Act creates the COGCC⁸ and grants the Commission "jurisdiction over all persons and property, public and private, necessary to enforce" the provisions of the Act, and the "power to make and enforce rules, regulations, and orders pursuant to this [Act], and do whatever may be reasonably necessary to carry out the provisions of this [Act]."⁹ The COGCC has adopted rules and regulations to implement the provisions of the Conservation Act.

The Conservation Act's legislative declaration states that it is in the public interest to:

promote the development, production, and utilization of natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare; to protect the public and private interests against the evils of waste in the production and utilization of oil and gas by prohibiting waste;¹⁰ to safeguard, protect and enforce the coequal and correlative rights of owners and producers in a common source or pool¹¹ of oil and gas to the end that each such owner and producer in a common pool or

source of supply of oil and gas may obtain a just and equitable share of production therefrom.¹²

In the exercise of its powers to maximize the ultimate recovery from a pool and to avoid the drilling of unnecessary wells, the COGCC has established rules and can issue orders that establish the location of wells in a pool.

Before a well can be drilled in Colorado, an application for permit to drill ("APD") must be approved by the COGCC.¹³ For an APD to be approved, the bottom of the well must be at a location that is permitted by rule or order of the COGCC. Permitted locations may be identified by: (1) a field order established by COGCC order;¹⁴ (2) statewide well location rules; (3) special well location rules; and (4) exceptions to permitted well location rules that are granted either administratively or by COGCC order. Wells may be drilled vertically or directionally, and the surface location is not necessarily above the bottom hole location. In selecting a surface location, the lessee/operator¹⁵ takes into account topography, surface use, and other similar matters, and must comply with the provision of COGCC Rule 603.¹⁶

COGCC rules ("Rules") and orders thus determine a permitted location for a well. In the absence of any contractual provisions governing drilling locations, or restrictions under the COGCC's health and safety regulations that are discussed in more detail below, a mineral interest lessee/operator could claim a legal right to drill at any permitted location. Identifying possible permitted locations for oil and gas development in relation to planned surface development is an important step in a surface developer's due diligence and development planning process.

Field Orders

The COGCC has the power to issue orders that establish drilling units of specified and approximately uniform size and shape covering any pool.¹⁷ The initial order establishing drilling units permits only one well to be drilled and produced from the pool in that drilling unit, and identifies the permitted location for the well in that drilling unit.¹⁸ The size and shape of the drilling unit is determined based on evidence presented at the hearing and is required to be no smaller than can be efficiently and economically drained by one well.¹⁹

After wells in a field subject to a field order have produced for a period of time, the behavior of the wells may suggest that

the original estimate of the area that can be efficiently and economically drained by one well is not correct and that additional wells may be required to produce the oil and gas in the drilling unit efficiently and economically. In that case, the Conservation Act permits the COGCC, on application, notice, and hearing, to decrease or increase the size of the drilling units or to increase the number of wells that can be drilled in an existing spacing unit.²⁰

Statewide Well Location Rules

Until such time as a field order is issued, wells may be located in accordance with COGCC Rule 318. Part (a) of Rule 318 states that a well proposed to a depth in excess of 2,500 feet below the surface will be located not less than 600 feet from any lease line and no closer than 1,200 feet from any other well producing from the same formation. Part (b) of Rule 318 states that a well proposed to a depth less than 2,500 feet below the surface will be located not less than 200 feet from any lease line and no closer than 300 feet from any other well producing from the same formation, except that only one producible well may be allowed in each governmental quarter-quarter section.²¹

Well locations under Rule 318 also are subject to the limitations of the safety requirements of Rule 603(a), which require wells to be set back at least 150 feet from any surface property line, occupied building, public road, major above-ground utility line or railroad.²² As will be discussed in more detail in Part II of this article, in areas designated as "high density," more stringent well location requirements may apply.²³

Special Well Location Rules

In some large areas, development of an oil and gas formation may have been conducted by a series of operators over an extended period of time. As part of that process, a number of field orders may have been issued establishing drilling units for production from that formation. Those field orders may not be consistent with respect to the size of drilling units, and the number of permitted wells in the drilling units or in the permitted locations for wells in the drilling units. In addition, there may be parts of the field that are not subject to field orders, but are subject to statewide well location rules.

To avoid the inconsistency in the development of a field that may result from a

patchwork of varying rules and orders, the COGCC may establish a special well location rule to govern a large area. Two such special well location rules already have been established: (1) a rule for the Greater Wattenberg Area ("GWA") (Rule 318A), which generally covers an area extending approximately fifty miles east of Boulder and north of Denver to Fort Collins; and (2) a rule for the Niobrara Formation (Rule 318B), located in eastern Yuma County. Because of the increasing development in the area affected by the GWA, the GWA Special Well Location rule is discussed in detail below.

GWA Special Well Location Rule

The GWA Special Well Location Rule is defined in COGCC Rule 318A. The purpose of Rule 318A is to identify certain blocks of land in each quarter section in the GWA that are predetermined as acceptable locations for purposes of drilling or twinning wells, deepening wells, re-completing wells, and commingling production in any or all of the Cretaceous Age formations from the surface to the base of the Dakota formation ("GWA Drilling

Windows"). The COGCC has adopted a policy for the implementation of Rule 318A, entitled "Policy on Staff Administrative Application of the Greater Wattenberg Special Well Location Rule 318A" ("GWA Policy").²⁴

For each quarter section of land, Rule 318A sets up five GWA Drilling Windows, determined as follows: (1) four separate squares with sides 400 feet in length, where the center of each such square is the center of a quarter-quarter section; and (2) a square with sides 800 feet in length, the center of which is the center of the quarter section. The GWA Policy provides that Rule 318A is applied with respect to surface locations and bottom hole locations.

An APD for a well with a bottom hole location in a GWA Drilling Window can be approved administratively without further notice or hearing, provided that the surface location for that well is acceptable. If a well is designed to have a bottom hole location outside a GWA Drilling Window, permission must be obtained from the COGCC before the APD can be approved. That permission can be obtained administratively, if the consent of offsetting miner-

al owners or lessees is obtained,²⁵ or from the COGCC after notice and hearing.

The GWA Policy states that the intent of the COGCC is "to limit the number of future and existing well sites to five (5) per quarter section." However, each well site "may have one (1) or more existing surface locations."²⁶ The GWA Policy effectively provides that an APD will be approved if the proposed surface location fits one of the following criteria:

- 1) the proposed surface location is a new location in a GWA Drilling Window, and there is no existing surface location outside and attributed to that GWA Drilling Window;
- 2) the proposed surface location is a new location and is less than 150 feet from an existing surface location that is in or attributed to the GWA Drilling Window; or
- 3) the proposed surface location is a new location, is more than 150 feet from an existing surface location, and the operator notifies the surface owner who consents to or does not object to the proposed location.²⁷

If the proposed surface location for the well does not fall into one of these cate-

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gories, the operator may request a variance pursuant to the COGCC Regulations. The operator and the surface owner also can limit the number and location of wellsites by surface use agreement. Therefore, unless a lessee/operator seeks a variance or otherwise is limited by a surface use agreement, a lessee/operator can locate wells without seeking a variance or surface owner consent in any of these locations.

Exception Locations

Exceptions to permitted locations established by a field order, by the statewide well location rule, or by a special well location rule may be obtained for geologic, environmental, topographic, or archaeological conditions; surface owner request; irregular sections; or for other good cause shown.²⁸ An exception may be obtained by the consent of the Director of the COGCC in limited circumstances (such as may be permitted in a field order). An exception also may be allowed by administrative approval if the consent of the offsetting mineral owners or lessees affected by the exception location is obtained, or by COGCC Rule 502(b), which allows the Director to grant variances in certain circumstances, if no objection is submitted to a request for consent to a variance.²⁹ An exception location also may be obtained by order of the COGCC after notice and hearing, if administrative approval is not available.³⁰

ENVIRONMENTAL AND OPERATIONAL IMPACTS

Once the permit to drill has been issued and development begins, the activities associated with oil and gas development generate pollutants that, if released into the environment or are improperly disposed of, may pose risks to human health or the environment.³¹ Likewise, ongoing production and maintenance of wells and associated infrastructure involves the use of machinery and activity noticeable and potentially disruptive or dangerous to neighboring development.

In the drilling and well completion phase, access roads and a drilling pad are constructed and remain for access during well production activities. In the process of drilling, drill cuttings and drilling muds, used to lubricate the drill bit and remove cuttings, are brought to the surface. They may contain metals and other contaminants, including mercury, cadmium, arsenic, and hydrocarbons.³² These waste materials are typically placed on-

site in a reserve pit (also referred to as a drilling pit) and then either moved offsite for disposal or buried onsite.³³ Well completion wastes may include hydrochloric acid, waste cement, and metal casings, among other wastes.³⁴

During production activities, produced water from the subsurface is one of the most significant waste streams and may contain contaminants, including benzene, naphthalene, toluene, metals, and radionuclides. This water is typically reinjected into the subsurface, but also may be used as a dust suppressant on roads, allowed to percolate or evaporate in pits, or may be treated and discharged.³⁵ State regulations also specifically allow the discharge of produced water to "state waters," as well as "beneficial use" of produced water.³⁶ Such discharge or use must be consistent with the state discharge requirements, as well as those governing the use and administration of water.³⁷ Beneficial uses, for example, could include irrigation or domestic water supply.

If natural gas conditioning, which removes impurities, is performed at the site, the process may involve use of triethylene glycol as a desiccant, sulfur, and iron sponge to remove hydrogen sulfide and carbon dioxide and separation of natural gas liquids.³⁸ Tanks for the temporary storage of oil, natural gas liquids (condensate), and/or produced water also may be located onsite.³⁹

The sludge that forms on the bottom of these tanks, known as "tank bottoms," requires removal and is likely to contain hydrocarbons and other contaminants that must be disposed of.⁴⁰ Production also involves the use of machinery, including pumps, heater-treaters, and motors that produce air emissions and noise and require fuel.⁴¹ Under state regulations, noise associated with these operations is allowed in residential areas at levels up to 55 db(A) during the day and 50 db(A) at night, *in addition to* ambient noise levels.⁴² Current Colorado case law suggests these standards may preempt more stringent local noise ordinances.⁴³

Well maintenance activities required at regular intervals involve use of strong acids for scale removal, paints, and cleaning solvents, as well as use of corrosion inhibitors and stimulation compounds that are flushed through the well.⁴⁴ These materials may appear in production water or spills at the surface.⁴⁵ Well maintenance also may require the use of a workover rig with its attendant noise, traffic, and emissions.⁴⁶

Spills from leaking tanks, spills during transfer of condensate, and chemicals associated with production or maintenance activities or releases from flowlines are the most common forms of accidental releases.⁴⁷ Well blowouts also may occur and, while rare, can result in releases of pollutants, as well as significant destruction of equipment and danger to workers.⁴⁸

When a well ceases production, if it is part of a production field, the well may be converted to an injection well regulated under the federal Safe Drinking Water Act⁴⁹ for disposal of produced water from other wells, or it may be used for purposes of enhanced recovery.⁵⁰ If the well is abandoned, downhole equipment is removed, the wellbore is cleaned of fill, and scale and other debris and cement plugs and pressurized fluid are placed in the well bore to prevent the inflow of fluid to the well casing.⁵¹ Finally, the well casing is cut below the surface and capped with a steel plate and the ground surface is reclaimed.⁵²

Associated flowlines may be abandoned by simply purging liquid hydrocarbons, cutting the line off at least three feet below the ground surface or the depth of the flowline, whichever is less, and sealing the ends.⁵³ This abandoned infrastructure may require removal during site preparation and construction and may be a location of undetected releases that require remediation.

REQUIREMENTS AND POTENTIAL LIABILITIES OF A SURFACE OWNER

Oil and gas exploration and production activities are regulated under various federal, state, and local laws and regulations. Most statutory and regulatory requirements apply to the well operator, not the surface owner.⁵⁴ Nevertheless, there remain four principal sources of potential statutory and/or regulatory liability and obligations to a surface owner related to environmental impacts of oil and gas well operations. These sources of liability are: (1) liability for releases or potential releases of "hazardous substances" under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA");⁵⁵ (2) liability for contributing to the "handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste [that] may present an imminent and substantial endangerment to health or the environ-

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ment” under the Resource Conservation and Recovery Act (“RCRA”);⁵⁶ (3) liability for releases or threatened releases of oil to navigable waters under the Oil Pollution Act (“OPA”)⁵⁷ and the Clean Water Act;⁵⁸ or (4) state law. In addition, a surface owner could face tort liability to future purchasers and tenants in certain circumstances related to both operational and environmental impacts.

Statutory Liability for Environmental Conditions

The four principal sources of statutory liability to a surface owner related to environmental impacts of oil and gas well operations are discussed below. These include CERCLA, RCRA, the Clean Water Act and OPA, and state law.

CERCLA

Regardless of whether a property owner caused or contributed to the presence of hazardous substances on its property, CERCLA imposes liability on current and past owners of a contaminated site for: (1) costs of removal or remedial action incurred by the United States, a state, or Indian tribe; (2) other necessary response costs incurred by “any person”; (3) natural resource damages; and (4) the costs of any health assessments carried out under the statute, to the extent caused by any release or threatened release of hazardous substances.⁵⁹ Response costs include the costs of any remedial action and investigation associated with cleaning up hazardous substances and also may include agency enforcement and oversight costs.⁶⁰

CERCLA excludes the following from the definition of “hazardous substances”: “petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F). . . .”⁶¹ The term does not include “natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).”⁶² In turn, subparagraph (C) includes RCRA “hazardous waste” in the definition of “hazardous substance.” The definition of RCRA “hazardous waste” excludes “other wastes associated with the exploration, development or production of crude oil or natural gas.”⁶³ This CERCLA exclusion is known as the “petroleum exclusion.” In parsing this statutory language, the Environmental Protection Agency (“EPA”) has interpreted the petroleum exclusion:

to apply to materials such as crude oil, petroleum feedstocks, and refined petroleum products, even if a specifically listed or designated hazardous substance is present in such products. However, EPA does not consider materials such as waste oil to which listed CERCLA substances have been added to be within the petroleum exclusion. Similarly, pesticides are not within the petroleum exclusion, even though the active ingredients of the pesticide may be contained in a petroleum distillate.⁶⁴ Likewise, some courts have held that any materials that are not petroleum fractions sent for refinement or that are simply waste streams associated with the extraction process, such as drilling muds, cuttings, or tank bottoms, are not within the exclusion.⁶⁵

As discussed above in the section on environmental and operational impacts, included among the waste streams associated with oil and gas extraction are drill cuttings, drilling muds, stimulation fluids, biocides, corrosion inhibitors, well cleaning solvents, paint, and other stimulation agents.⁶⁶ Certain of these and other similar substances associated with oil and gas extraction would not be considered within the scope of the CERCLA exclusion in the event that they have been released on or from a site.

Notably, in a 1996 California case, *Nixon-Egli Equipment Co. v. John A. Alexander Co.*,⁶⁷ a current property owner brought CERCLA claims against the former owner and developer of the property for costs incurred in cleaning up contamination from old oil sumps that had been mixed into the fill soils when the site was graded and filled.⁶⁸ The court denied the defendant’s motion for summary judgment with respect to the plaintiff’s CERCLA claims based on the petroleum exclusion.⁶⁹ This case illustrates that the petroleum exclusion may not be relied on to protect a surface owner from liability for wastes associated with current and former oil and gas wells.

Defenses to CERCLA liability are available to owners of real property who can establish that they are either “innocent landowners” or “bona fide prospective purchasers.”⁷⁰ To qualify as an “innocent landowner,” a property owner must establish that the release was caused by a third party and that the property owner had no contractual relationship with that party—including one transferring title or possession to the real property. This is true unless the property owner acquired the

property after the disposal or placement of the hazardous substance on, in, or at the facility and, at the time the property owner acquired the facility, he or she did not know and had “no reason to know” that any hazardous substance subject of the release or threatened release was disposed of on, in, or at the facility.⁷¹

To establish “no reason to know” of the contamination, the property owner must demonstrate that, before acquiring the property, he or she carried out “all appropriate inquiries” into the previous ownership and uses of the facility “in accordance with generally accepted good commercial and customary standards and practices.”⁷² Additionally, the property owner must have: (1) taken reasonable steps to stop any continuing release, prevent any threatened release, and prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance; (2) provided access and cooperation during response actions; and (3) complied with and not impaired any institutional controls on the property.⁷³ For property acquired on or after May 31, 1997, and until EPA has promulgated final implementing regulations, following the procedures of the American Society for Testing and Materials (“ASTM”) (including the document known as “Standard E1527-00”),⁷⁴ will satisfy the “appropriate inquiries” requirement.⁷⁵

If contamination is discovered prior to acquisition of title, landowners or tenants who knowingly acquire or lease contaminated property after January 11, 2002 can avoid CERCLA liability as “bona fide purchasers.” To accomplish this, a purchaser can establish, by a preponderance of the evidence, the following:

- All disposal of hazardous substances at the facility occurred before the purchaser acquired the facility.
- The purchaser has made “all appropriate inquiries” into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices.
- The purchaser has provided all legally required notices with respect to the discovery or release of any hazardous substances at the facility.
- The purchaser has exercised appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release; has prevented any threatened future release; and has prevented or limited human, environ-

mental, or natural resource exposure to any previously released hazardous substance.

- The purchaser has provided full cooperation, assistance, and access to persons authorized to conduct response actions or natural resource restoration of a vessel or at a facility.
- The purchaser has provided full cooperation and access to persons authorized to conduct response actions to operate, maintain, or otherwise ensure the integrity of land use controls at the site.
- The purchaser has complied with any land use restrictions established as part of a response action and does not impede the effectiveness or integrity of any institutional control used at the site.
- The purchaser has complied with any request for information or administrative subpoena issued under CERCLA.
- The purchaser has established that it is not a potentially responsible party ("PRP") or affiliated with any other PRP for the property through any direct or indirect familial relationship, any contractual or corporate relationship other than the contractual or corporate relationship created through the conveyance of title to the property, or because of a reorganization of a business entity that was a PRP.⁷⁶

Given the potential liability of a surface owner for oil and gas waste streams and releases, establishing and taking actions during site development necessary to maintain one of these defenses may be worthwhile. However, it is important to note that these defenses may not be available where environmental contamination at issue is the result of ongoing oil and gas operations. Such defenses may be precluded because of (1) the release or threatened release of hazardous substances that happens after conveyance of title or (2) a mineral lease and/or surface use agreement between the surface owner and mineral lessee/operator that arguably could be construed as a form of "contractual relationship."

RCRA

RCRA authorizes EPA or "any person" to bring suit for injunctive relief and the imposition of civil penalties against "any person" who has

contributed to or who is contributing to the past or present handling, storage, treatment, transportation, or disposal

of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.⁷⁷

As noted above, certain wastes associated with exploration, development, or production of natural gas are excluded from the definition of hazardous wastes under RCRA, but these wastes nevertheless are considered solid wastes subject to RCRA §§ 6972 and 6973.⁷⁸ Under these provisions, a surface owner may be held liable for cleanup and penalties associated with petroleum wastes or releases, although, unlike CERCLA, liability will turn on the determination of whether the surface owner "contributed" to past or present disposal.⁷⁹

In *Nixon-Egli*, the plaintiff successfully brought claims under RCRA § 6972 (as well as CERCLA), alleging that the defendant developer had been responsible for incorporating contaminated material from oil sumps into the fill used at the site during grading activities.⁸⁰ In other cases, surface owners have escaped liability where they were found to have had no role in the management of the solid or hazardous waste that is the subject of suit.⁸¹ These cases suggest that RCRA liability may be limited or avoided, but *only if* a surface owner: (1) takes appropriate action to identify and ensure that wastes are appropriately remediated as a condition of taking title to property; and (2) does not exacerbate wastes related to oil and gas operations discovered after taking title.

Clean Water Act and OPA

Similar to CERCLA, the Clean Water Act and OPA can place liability for a release or threat of release not only on the party that disposed of waste, but also on the surface owner, regardless of the surface owner's degree of fault. OPA imposes liability on the owner or operator of a facility from which there is a discharge or substantial threat of a discharge of "oil" into "waters of the United States."⁸² "Oil" is defined as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil."⁸³ Waters of the United States are defined under EPA regulations to include "all interstate waters" and their tributaries.⁸⁴ Accordingly, to the extent that certain releases would be exempt from CERCLA under the petroleum exclusion, liability could be imposed under the OPA if the release were to "waters of the United States."

Similarly, under the Clean Water Act, the discharge of oil or hazardous substances "into or upon the navigable water of the United States . . . is prohibited" and the owner, operator, or person in charge of any onshore facility may be assessed civil penalties and response costs.⁸⁵ In the Pennsylvania case of *Quaker State Corp. v. U.S. Coast Guard*,⁸⁶ the court held that the "owner or operator" is to be defined as of the date of discovery of a spill. Therefore, the surface owner was considered to be an "owner" of an oil containment pit constructed by a former lessee and was held responsible for costs associated with cleanup incurred by the U.S. Coast Guard after a sheen was observed on the surface of a nearby creek.⁸⁷

Any tributary to a surface water body considered a water of the United States is likely also to be considered a water of the United States (including ditches and other drainage ways that may have only indirect connections to such water bodies), as are adjacent wetlands.⁸⁸ Therefore, a surface owner could face some potential liability under the OPA and Clean Water Act in the event of a discharge of oil or hazardous substances originating from oil



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and gas operations into most surface water bodies, as well as into wetlands, ditches, or other drainages.

State Law

Surface owners also face potential liability for environmental impacts of oil and gas well operations under state law, but such liability is unlikely to arise with respect to contamination related to oil and gas operations, unless the surface owner exacerbates or otherwise manages such contamination. Colorado does not have its own CERCLA-type liability provision for owners of contaminated sites. However, it does regulate management and disposal of hazardous wastes. For example, Colorado prohibits: (1) the on-site disposal or storage of any hazardous waste without a state permit therefor; and (2) the substantial alteration of any hazardous waste treatment storage or disposal facility or site, without first obtaining from the Colorado Department of Public Health and Environment ("CDPHE") a permit or the appropriate modification of an existing permit.⁸⁹

"Hazardous waste disposal" is defined as "any final action to abandon, deposit, inter, or otherwise discard hazardous waste after its use has been achieved or a use is no longer intended or any discharging of hazardous waste into the environment."⁹⁰ Colorado has rejected the argument that "disposal" includes passive migration of previously leaked or spilled waste.⁹¹ Therefore, to the extent any hazardous waste disposal occurred at a site, the subsequent owner could be liable for taking action that exacerbated such discharge, including improperly removing and disposing of such waste.

Colorado also has a provision somewhat akin to RCRA § 6973, under which the CDPHE has authority to issue such orders "as may be appropriate to protect the public health and safety or the environment" in the event of any emergency involving hazardous waste that presents an imminent or substantial threat to public health and safety or the environment.⁹² These provisions could be the basis for imposing remedial requirements on a current property owner for exacerbating existing conditions.

Moreover, Colorado regulates waste under its Solid Waste Act,⁹³ which mandates that all solid waste be disposed of, treated, or recycled at designated facilities approved by both the division and the county in which the facility is located. Importantly, oil and gas exploration and produc-

tion wastes are exempt from the definition of solid waste, unless they are deposited at a commercial solid waste facility.⁹⁴ Although such wastes are still subject to the citizen suit and imminent hazard provisions under RCRA,⁹⁵ Colorado has no such statutory provisions.

Exploration and production wastes are otherwise regulated under the Conservation Act. As discussed above, most obligations and liabilities under the Act fall to the oil and gas operator. In fact, COGCC policy makes clear that any cleanup of exploration and production waste encountered during development activities by the surface developer is voluntary.⁹⁶ However, the policy also requires that surface developers report exploration and production wastes encountered during development to the COGCC and that any cleanup of wastes containing contaminants exceeding COGCC standards must be done in accordance with a COGCC-approved site investigation and remediation work plan.⁹⁷

Finally, Colorado requires "any person engaged in any operation or activity which results in a spill or discharge or other substance which may cause pollution of the waters of the state" to notify CDPHE promptly of the discharge.⁹⁸ Anyone who "recklessly, knowingly, intentionally, or with criminal negligence" discharges "any pollutant" into any state water commits criminal pollution if the discharge is made in violation of any permit or in the absence of a permit, if a permit is required (for example, for point source discharges).⁹⁹ Similar to other sources of liability under state law, these sources are unlikely to be triggered in the absence of any activity by the surface owner that exacerbates contamination related to oil and gas operations.

Tort Liability to Third Parties

The previous section discussed potential statutory liability for environmental contamination related to oil and gas operations. A surface developer also could face tort liability to third parties injured as a result of the environmental and operational impacts of those operations. This section covers various theories of tort liability, including negligence, failure to disclose, and nuisance and trespass.

Negligence

In Colorado, plaintiff purchasers have recovered on negligence theories against

developers based on the existence of conditions that made the property inappropriate for the development. In *Calvaresi v. National Development Co.*,¹⁰⁰ portions of a subdivision were declared a geologic hazard zone due to the risk of subsidence posed by an underground mine. Lot owners brought a negligence action against the developer who knew of, but failed to disclose, the existence of a coal mine when selling lots for residential construction. In rejecting the defendants' claims that the trial court erred in denying a directed verdict, the court stated:

To recover under a theory of negligence, a plaintiff must prove that the defendant breached a duty of care owed to the plaintiff and thereby caused the plaintiff's damages. A legal duty to use reasonable care arises in response to a foreseeable risk of injury to others. . . . Here, the jury initially determined that the defendants were aware of the existence of the coal mine when they developed the subdivision. The jury then had to determine whether defendants were negligent in marketing the property as a residential subdivision. The evidence was undisputed that the defendants failed to investigate the possibility of subsidence or disclose the existence of the mine to purchasers of subdivision lots.¹⁰¹

Further, the duty of care can extend to neighboring properties for physical harm caused by artificial conditions on the land that the possessor realizes or should realize will cause an unreasonable risk of such harm.¹⁰²

Relevant regulatory standards such as setbacks from existing oil and gas wells and other safety standards could be viewed as the standard of care in determining negligence of the surface developer. A legislative enactment or regulation may conclusively establish the standard of care such that a violation of the standard is negligence *per se* or may be relevant evidence bearing on the issue of negligent conduct.¹⁰³ According to the Colorado Supreme Court in *Gerrity Oil & Gas Corp. v. Magness*, a regulation may define a standard of care owed by a defendant if:

(1) it was enacted for the public's safety; (2) it was intended to protect the class of persons of which the plaintiff is a member; and (3) it was enacted to prevent the type of harm suffered by the plaintiff.¹⁰⁴ (*Citations omitted.*)

In *Gerrity*, the Court concluded that COGCC Regulations could not be used as the basis of a claim of negligence *per se*

against a well operator.¹⁰⁵ However, it did allow the rules to be treated as evidence of a standard of care.¹⁰⁶

Under the *Gerrity* rationale, COGCC Regulations also could be treated as evidence of the standard of care applicable to the developer in the event of a claim by third parties for damages resulting from development planning that is inconsistent with COGCC safety standards, including standards for high-density areas. Local land use requirements for oil and gas operations could be used for the same purpose. A similar argument also could be made where a developer sold property for residential development with knowledge that contamination existed on the property at levels above state regulatory or risk-based cleanup criteria for the proposed type of land use.

Failure to Disclose

In addition to liability based on negligence, the presence of oil and gas operations or associated environmental conditions on or near a development site may result in liability to the surface developer if they are not disclosed to potential buyers. In general, a seller of real property

must disclose facts that are neither known nor readily ascertainable by the buyer and that materially and adversely affect the value or desirability of the property (often referred to as "latent defects"). Otherwise, a seller could face claims of fraud or misrepresentation.¹⁰⁷ Although there appear to be no Colorado cases directly on point, this obligation typically is not affected by contractual "as is" clauses.¹⁰⁸

Even in the absence of any known environmental conditions related to oil and gas operations, operational impacts of ongoing oil and gas production and the potential for further development may qualify as conditions requiring disclosure under Colorado law. Present and possible future operations may trigger disclosure obligations simply because they could materially and adversely affect the value or desirability of the property, and their possible impacts may not be readily ascertainable by the buyer.

Nuisance and Trespass

Common law theories of nuisance and trespass are other potential bases for liability to a surface owner for contamination associated with oil and gas opera-

tions. Under common law theories of nuisance and trespass, a property owner has a duty to exercise reasonable care to prevent activities and conditions on its property that might injure others.¹⁰⁹ Thus, a surface owner could be liable for migration of contaminants or other harmful conditions on its property over which the surface owner has control, even if those conditions were created by operations of the oil and gas operator on the site.

CONCLUSION

As outlined in this Part I, ongoing and past oil and gas operations may have both operational and environmental impacts that adversely affect planned development and could result in significant liability to a surface owner or developer. Part II of this article, to be published in the June 2005 issue, will cover the statutory, regulatory, and common-law legal obligations imposed on the oil and gas lessee and its operator, which may provide some protection to the surface owner or developer. Part II also will suggest a number of steps available to a surface owner or developer to limit its liability associated with existing or future oil and gas operations.

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Pat Kenney

"Nothing but good can result from an exchange of information and opinions between those whose circumstances and morals admit no doubt of the integrity of their views."

Thomas Jefferson to Elbridge Gerry, 1797.



Chuck Kall

NOTES

1. This article addresses the circumstance where mineral interests and surface interests are privately held, which is most common in the current oil and gas producing areas along the Front Range. Where mineral interests have been reserved by the federal government in the original patent, and/or the surface estate is owned by the federal government, a different analysis is necessary.

2. See Kane, "Drilling Boom Increases Rift over Property, Mineral Rights," *The Denver Post* (Jan. 10, 2005) at 1A, available at <http://www.denverpost.com/stories>.

3. CRS § 34-60-104.

4. Kane, *supra*, note 2. For a discussion of the extent of the right of the mineral interest holder to use the surface estate for drilling purposes, see the section entitled "Rights of the Mineral Interest Owner or Lessee" in text below. See generally COGCC, "Typical Questions from the Public about Oil and Gas Development in Colorado," Question 2.a. and Answer 2.a., available at <http://oil-gas.state.co.us>.

5. See *Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913, 926 (Colo. 1997).

6. *Id.*

7. CRS §§ 34-60-101 to -124.

8. CRS § 34-60-104.

9. CRS § 34-60-105(1).

10. The statutory definition of "waste" includes the waste of oil and gas during production activities, as well as:

(b) The locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; (c) Abuse of the correlative rights of any owner in a pool due to non-uniform, disproportionate, unratable, or excessive withdrawals of oil or gas therefrom, causing reasonably avoidable drainage between tracts of land or resulting in one or more producers or owners in such pool producing more than his equitable share of the oil or gas from such pool.

CRS § 34-60-103(11) through (13).

11. CRS § 34-60-116(1). A "pool" is defined as an underground reservoir containing a common accumulation of oil or gas, or both. Any such orders may be issued only after notice and hearing.

12. CRS § 34-60-102(1).

13. 2 C.C.R. 401-1 (*hereafter*, "COGCC Regs.") at § 303.

14. A field order is the order issued by the COGCC after notice and hearing that estab-

lishes the rules for development and operation of a specified oil or gas field.

15. Because the well operator typically will be either the mineral interest lessee or the person operating the well on behalf of the lessee, this article refers to obligations applicable to either or both as applicable to the "lessee/operator."

16. COGCC Rule 603(a)(1) provides that the wellhead shall be located a distance of 150 feet or 1½ times the height of the derrick, whichever is greater, from any occupied building, public road, major above-ground utility line or railroad. Rule 603(a)(2) states that a well must be at least 150 feet from a property line unless a waiver is obtained.

17. CRS § 34-60-116(1).

18. CRS § 34-60-116(3).

19. CRS § 34-60-116(2).

20. CRS § 34-60-116(4).

21. Rule 318 does not apply to secondary recovery projects or to fracture or crevice production found in shale. In addition, the rule does not apply in operations conducted under a federal unit plan of development, except that a well proposed to a depth in excess of 2,500 feet below the surface will be located not less than 600 feet from the exterior and interior boundaries of the unit, and a well proposed to a depth less than 2,500 feet below the surface will be located not less than 200 feet from the exterior and interior boundaries of the unit.

22. COGCC Regs. § 603(a).

23. COGCC Regs. § 603(e). "High density" areas are determined at the time of well permitting and constitute areas where "thirty-six . . . or more actual or platted building units (as defined in the 100 Series rules) are within the one thousand (1000) foot radius or eighteen . . . or more building units are within any semi-circle of the one thousand (1000) foot radius (*i.e.*, an average density of one . . . building unit per two . . . acres) . . . [and] [i]f platted building units are used to determine the density, then fifty percent . . . of said platted units shall have building units under construction or constructed." COGCC Regs. § 603(b). High density rules also apply if an educational facility, assembly building, hospital, nursing home, board and care facility, or jail is located within 1,000 feet of a wellhead or production facility, or the COGCC designates the area an "outside activity area."

24. COGCC, "Policy on Staff Administrative Application of the Greater Wattenberg Area Special Well Location Rule 318A" (April 26, 1999) (*hereafter*, "GWA Policy"), available at <http://oil-gas.state.co.us>.

25. See COGCC Regs. §§ 318(c) and 502(b).

26. GWA Policy, *supra*, note 24 at ¶ 4.

27. *Id.* at ¶ 6.

28. COGCC Regs. § 318(c).

29. See COGCC Regs. §§ 318(c) and 502(b).

30. COGCC Regs. § 502(b).

31. See U.S. Environmental Protection Agency, Office of Compliance, Sector Notebook Project, Profile of the Oil and Gas Extraction Industry (Oct. 2000) at 24-65 (*hereafter*, "Pro-

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file"). Drilling practices discussed in this section are similar to those used for coalbed methane recovery, with some adaptations to accommodate coal mining operations and different rock characteristics. *Id.* at 6.

32. Profile, *supra*, note 31 at 38.

33. *Id.* at 49; *see also* COGCC Regs. §§ 907(d) and 1003(d) (drilling pit closure and reclamation requirements).

34. Profile, *supra*, note 31 at 38.

35. *Id.* at 47; *see also* COGCC Regs. § 907(c) (produced water management requirements).

36. COGCC Regs. § 907(c). "State waters" mean "any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed." CRS § 25-8-103(19).

37. COGCC Regs. § 907(c).

38. Profile, *supra*, note 31 at 31 and 40.

39. *Id.* at 40.

40. *Id.*

41. *Id.*

42. COGCC Regs. § 802(a). "In all sound level measurements, the existing ambient noise level from all other sources in the encompassing environment at the time and place of such sound level measurement shall be considered to determine the contribution to the sound level by the oil and gas operations." *Id.* at § 802(a)(5). These requirements apply to all oil and gas operations, including seismic and drilling activities, as well as production activities. *Id.* at § 802(a). The notation "db(A)" is used to denote A-weighted decibels, a common measurement of sound energy.

43. *See Town of Frederick v. N. Amer. Resource Co.*, 60 P.3d 758, 765 (Colo.App. 2002) (increased local setbacks and more stringent noise regulations preempted by state requirements).

44. Profile, *supra*, note 31 at 41.

45. *Id.*

46. *Id.*

47. *Id.* at 34.

48. *Id.* at 35.

49. 42 U.S.C. § 300f through 300j.

50. *Id.* at 33.

51. *Id.*

52. *Id.*; *see also* COGCC Regs. § 319.

53. *See* COGCC Regs. § 1103.

54. One notable exception arises when a developer encounters previously plugged and abandoned wells during earth-moving operations that must be re-abandoned to allow development activities to progress. The COGCC considers such re-abandonment operations to be "oil and gas operations" that must be conducted by a registered operator in compliance with COGCC requirements and requires the surface developer or its designee to register as an operator. *See* COGCC, "Policy for Plugged and Abandoned Wells and Exploration and Production Waste Encountered by Surface Development Projects" (Dec. 3, 2001) (*hereafter*,

"Surface Development Policy"), available at <http://oil-gas.state.co.us>.

55. 42 U.S.C. §§ 9601-9674.

56. 42 U.S.C. §§ 6972 and 6973.

57. 33 U.S.C. §§ 2701-2761.

58. *Id.*

59. 42 U.S.C. §§ 9607(a)(1), (2) and 9613.

60. 40 C.F.R. § 300.5.

61. 42 U.S.C. § 9601(14).

62. *Id.*

63. 42 U.S.C. § 9621.

64. 50 Fed. Reg. 13456 and 13460 (April 4, 1985).

65. *See Tosco Corp. v. Koch Indus., Inc.*, 216 F.3d 886, 893 (10th Cir. 2000) (petroleum plume containing mixture of petroleum and hazardous wastes not within exclusion); *Cose v. Getty Oil Co.*, 4 F.3d 700, 706-09 (9th Cir. 1993) (crude oil tank bottoms not "petroleum" and therefore not within exclusion); *Nixon-Egli Equipment Co. v. John A. Alexander Co.*, 949 F.Supp. 1435, 1444-45 (C.D.Cal. 1996) ("drilling byproducts such as the ground soil ('cuttings') and mud used to lubricate the drill ('drilling muds') would not fall within the petroleum exclusion"); *U.S. v. Western Processing Co.*, 761 F.Supp. 713, 721 (W.D.Wash. 1991) (wastes from interior of tank that held petroleum product not covered under petroleum exclusion).

66. *See* Profile, *supra*, note 31 at 37-45.

67. *Nixon-Egli, supra*, note 65 at 1444-45.

68. *See* Trimanche, "Petroleum Waste Sites Revisited—Oiling the Gears of the CERCLA/RCRA Suit," 27 *E.L.R.* 10172 (April 1997).

69. *Nixon-Egli, supra*, note 65 at 1444-45.

70. Other defenses that could be relevant, depending on the circumstances of the release, include defenses for releases caused by an act of God or an act of war, as well as for owners of property contiguous to, or otherwise similarly situated to, a contaminated site that is or may be contaminated by a release or threatened release of a hazardous substance from that contaminated site. *See* 42 U.S.C. §§ 9701(b)(3) and 9607(q).

71. 42 U.S.C. §§ 9601(35)(A) and 9607(b)(3). Other showings not relevant here also can be made to qualify for the defense.

72. 42 U.S.C. § 9601(35)(B)(i)(I).

73. 42 U.S.C. § 9601(35)(A) and (B)(i)(II).

74. The Standard is entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process." American Society for Testing and Materials ("ASTM") standards are available at <http://www.astm.org>.

75. 42 U.S.C. § 9601(35)(B)(iv)(II). The statute identifies the 1997 standard as "Standard E1527-97." In a subsequent clarification, EPA promulgated a rule that allows use of the more recent Standard E1527-00. *See* 68 Fed. Reg. 24888 (May 9, 2003). EPA also has issued proposed implementing regulations. *See* 69 Fed. Reg. 52542 (Aug. 26, 2004). However, EPA's final rule has not been promulgated as of the date of this writing (March 2005).

76. 42 U.S.C. §§ 9601(40) and 9607(r).

77. 42 U.S.C. §§ 6972(a)(1)(B) (citizen suit) and 6973(a) (EPA action).

78. *See Zands v. Nelson*, 779 F.Supp. 1254, 1264 (S.C.Cal. 1991).

79. *Id.* at 1264-65.

80. *Nixon-Egli, supra*, note 65 at 1438. The defendant apparently did not challenge the assertion that its actions "contributed to" the release, and its motion for summary judgment on statute of limitations grounds failed. *Id.* at 1441.

81. *See First San Diego Properties v. Exxon Co.*, 859 F.Supp. 1313, 1315-16 (S.D.Cal. 1994) (purchaser of previously contaminated property who has allegedly become aware of contamination, but has taken no or inadequate steps to mitigate/remediate harm, but also has not affirmatively added wastes to site not liable under citizen suit provisions of RCRA); *Triffler v. Hopf*, No. 92 C7193, 1994 WL 643237 at *7, 1994 U.S. Dist. LEXIS 16158 at *20-21 (N.D.Ill. Nov. 4, 1994) ("Absent some evidence that the Hopfs . . . 1) directly contributed to the contamination through the use of petroleum products on the property, 2) know about the leakage, or 3) at the very least, had reason to know that the underground storage tanks were leaking and yet failed to act, no liability under § 6972(a)(1)(B) can be found.").

82. 33 U.S.C. § 2702.

83. 33 U.S.C. § 2701(23).

84. 40 C.F.R. § 122.2(b) and (e).

85. *See* 33 U.S.C. § 1321(b)(3) and (6), and 1321(f).

86. *Quaker State*, 681 F.Supp. 280, 285 (W.D.Pa. 1988).

87. *Id.*

88. *See Riverside Irrigation Dist. v. Andrews*, 568 F.Supp. 583, 584 (D.Colo. 1983) (tributary to South Platte River is navigable water of United States subject to Clean Water Act); *see also* 40 C.F.R. § 122.2 ("defining waters of the United States" as *inter alia*: tributaries and impoundments of U.S. waters; wetlands adjacent to U.S. waters; and "all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, 'wetlands,' sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters"); *U.S. v. Riverside Bayview Homes, Inc.*, 471 U.S. 121 (1985) (including wetlands adjacent to U.S. waters as navigable waters on basis of "aquatic system" concept); *U.S. v. Phillips*, 356 F.3d 1086 (9th Cir. 2004) (accepting broad interpretation of navigable waters). *Cf. Solid Waste Auth. of N. Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (striking down "Migratory Bird" rule as test for jurisdiction).

89. CRS § 25-15-308. Interim status facilities as defined under RCRA, 42 U.S.C. § 6925 need not have a permit.

90. CRS § 25-15-200.3.

91. *People v. Thoro Products Co., Inc.*, 70 P.3d 1188, 1199 (Colo. 2003).

92. CRS § 25-15-301(4)(a).

93. CRS §§ 30-20-101 *et seq.*

94. CRS § 30-20-101(6)(b).

95. 42 U.S.C. §§ 6972(a)(1)(B) (citizen suit) and 6973(a) (EPA action).

96. See COGCC, "Policy for Plugged and Abandoned Wells and Exploration and Production Waste Encountered by Surface Developers" (Dec. 3, 2001), available at <http://oil-gas.state.co.us>.

97. *Id.*

98. CRS § 25-8-601.

99. CRS § 25-8-609.

100. *Calvaresi*, 772 P.2d 640 (Colo.App. 1988).

101. *Id.* at 644; see also *Fortier v. Dona Anna Plaza Partners*, 747 F.2d 1324, 1336 (10th Cir. 1984) ("Once a developer assumes control over the design and construction . . . he or she owes a duty of care in the exercise of that control.").

102. *Loughlin v. U.S.*, 209 F.Supp.2d 165, 170 (D.D.C. 2002) (refusing to dismiss negligence claims against vendor and owner of neighboring property arising out of environmental contamination).

103. See *Gerrity*, *supra*, note 5.

104. *Id.*

105. *Id.* at 930.

106. *Id.* at 931.

107. See, e.g., *Schnell v. Gustafson*, 638 P.2d 850, 852 (Colo.App. 1981) (failure to disclose existence of uranium mine tailings beneath residence). The discussion in this article does not address contractual theories, such as implied warranties of habitability, as these types of claims can be more readily managed between the parties with "as is" clauses and other contractual mechanisms. See *Wozniak*, "Construc-

tion and Effect of Provision in Contract for Sale of Realty by Which Purchaser Agrees to Take Property 'As Is' or in Its Existing Condition," 8 A.L.R.5th 312.

108. See *Haney v. Castle Meadows, Inc.*, 839 F.Supp. 753, 757 (D.Colo. 1993) ("[A] seller who actually knows there is a latent defect on the property and chooses not to reveal this to the purchaser cannot hide behind contract language purporting to shift the risk of nondisclosure to the purchaser."); *Wozniak*, *supra*, note 107 at 312.

109. See generally *Farmland Indus., Inc. v. Colo. & Eastern R.R. Co.*, 944 F.Supp. 1492, 1498 (D.Colo. 1996) and cases cited therein. ■



Staff of CBA Department of Local Bar Relations and Access to Justice Commended by Community Organizations

In early February 2005, Colorado Bar Association ("CBA") Executive Director Chuck Turner received the letters printed below. These letters are from the member organizations of the Colorado Alliance for Cruelty Prevention ("CACP") and a representative of THE LINK organization. CACP is comprised of Advocates for Children/CASA; American Humane Association; Animal Assistance Foundation; Aurora Probation Department; Colorado Federation of Animal Welfare Agencies; Colorado Veterinary Medical Association; Denver District Attorney's Office; Denver District Court; Denver Fire Department; Denver Police Department; Dumb Friends League; and First Judicial DA's Office.

Dear Mr. Turner:

The member organizations of the Colorado Alliance for Cruelty Prevention (CACP) wish to express our gratitude for the ongoing support provided to CACP by the Colorado Bar Association (CBA).

With your support, CACP is making progress towards its goals of empowering professionals to recognize the connection between animal abuse and family violence; helping professionals recognize the issue as a public safety issue; developing provider-appropriate referral information; and fostering community networks.

Our relationship with the [CBA] has provided CACP with credibility and standing with the broad array of professions with whom CACP interacts. In addition, the [CBA] has:

- provided a place for the Alliance to hold its regular meetings
- developed (and hosts) a Web site that is rich in content
- delivered logistical support for training programs, especially for the society and Animals Forum training in October that reached out to treatment providers[.]

We wish to express particular thanks for the leadership that **Kathleen Schoen** [CBA Director of Local Bar Relations and Access to Justice], **Judy Gordon** [CACP consultant], and **Michelle Miller** [CBA Local Bar Relations and Access to Justice Program Coordinator] have afforded CACP. Their Commitment and enthusiasm, coupled with the support of the CBA, continues to propel us forward.

The team at CBA is truly the glue that bonds this effort. We are indeed appreciative as CACP strives for "Safe Pets . . . Safe Families . . . Safe Communities."

Sincerely,

[signed, CACP member organizations]

Dear Steering Committee:

On behalf of THE LINK, as well as myself, I cannot thank each of you enough for the sponsorship and support you have given to the CACP. This group has helped launch the efforts of THE LINK in Aurora and it has become a very successful collaboration for many organizations. Each of the individuals involved are so enthusiastic and passionate about this important and vital work, which has been long over due for the victims it serves. It is my pleasure to be associated with such a wonderful group of people and I hope CACP will be in existence for a very long time.

Cordially,

Kay Dahlinger, Chief Probation Officer, City of Aurora