

Drilling boom increases rifts over property, mineral rights

By Arthur Kane
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Silt - Orlyn and Carol Bell moved to a 110-acre ranch south of town in 1981 for the brilliant star-lit skies and towering mountain views.

Last year, the energy boom brought something they hadn't bargained for - a four-story natural-gas drilling rig near their house and daily parades of trucks that rumble across their land.

"This was a gorgeous place to live," said Carol Bell, who worries about the environmental dangers and decline in property value. "But people don't want to live near this."

The Bells' saga has long been familiar across Colorado and the United States, where often one party owns surface property rights and another owns the rights to the underground minerals.

Now, skyrocketing gas and oil prices - plus new drilling technology that makes exploration possible in new areas - have increased the number of wells in Colorado. In turn, the development has sparked more conflicts between surface and mineral owners.

While the state does not keep statistics on the number of conflicts, state and county officials agree the disputes have climbed with the prices of gas and oil.

The Colorado Oil and Gas Conservation Commission is meeting today to discuss ways to mediate the disputes, and a Democratic lawmaker says she will propose legislation this year that would increase the rights of surface owners.

The oil and gas industry, however, opposes the legislation and says major changes would violate their rights to get at the resources they own.

"When (property owners) bought that surface right, they knew there was another mineral owner," said Ken Wonstolen, senior vice president at the Colorado Oil and Gas Association. "This industry is not prepared to walk away from its property rights."

On the other hand, property owners say the state law giving mineral owners the right to get at oil and gas without the landowner's permission violates their property rights.

The Bells said they tried to buy the mineral rights when they purchased the ranch but that they weren't for sale. For more than two decades, the minerals were not developed, but last summer EnCana USA decided it wanted to drill for gas under the Bells' property.

The Bells and EnCana started to negotiate a surface agreement, with EnCana offering \$2,500 an acre for the nearly 3 acres it needed to stage the wells and more money to run a pipeline across the Bells' land, Carol Bell said.

With land in the area going for \$6,000 an acre, the Bells felt the price was not fair and wanted environmental provisions that they said EnCana opposed. So, as allowed by law, EnCana posted a surface-damage bond and started drilling on the Bells' property several hundred feet from their home without an agreement.

The Bells hired a lawyer but, knowing that the law wasn't on their side, eventually signed the surface-use agreement so they would have more say about what is happening on their land.

Walter Lowry, EnCana community relations director, said the company reaches agreements in nearly all cases and that there would be no gas development without the right to go onto the property.

"We negotiate in good faith," he said. "The mineral estate is the dominant estate, and if it was any other way there would be no rigs running around the country."

But Mike Matheson, an oil and gas technical adviser for La Plata County, said sometimes surface owners have little choice.

"The oil and gas commission says 95 percent of wells are drilled with surface agreements in place," he said. "It's like saying 99 percent of Russians voted for Leonid Brezhnev. It's not a fair process."

Newly elected state Rep. Kathleen Curry, D-Gunnison, plans to introduce legislation Jan. 17 that would require surface agreements before a mineral owner could drill and would provide land appraisals and mediation when the surface and mineral owners cannot come to terms.

"The concerns of (surface owners) aren't being heard by the energy industry," she said, adding that a small percentage of companies that have "brought this on themselves" are causing the problem.

The oil and gas commission, which issues permits for wells and decides how many a company can have per acre, is looking for a way to mediate disputes without legislation.

In 2000, after a drilling surge in La Plata County, the commission set up a process in which a state regulator, company representative and landowner can visit a site to attempt to settle any disputes.

The commission today will discuss implementing the program statewide to ensure that the permit has conditions to minimize problems for the landowner.

The draft of the new rule says it would allow site-specific drilling permit conditions to avoid "unreasonable crop loss or land damage, or to prevent or mitigate health, safety and welfare concerns."

Commission Director Brian Macke said the agency's job is to balance the mineral owners' rights to get at the fuel while limiting problems for landowners.

Macke said the site visits have helped resolve disputes in La Plata, but Ron Burkett, who owns 4,200 acres 12 miles east of Durango, said a site visit won't solve his problems.

The BP corporation has drilled 23 wells and is planning eight more on his property. He said he fears the drilling is affecting the water on his ranch.

"I'm living in an industrial zone," said Burkett, who owns some of the mineral rights and receives royalties from some wells. "They only need half the wells they drill."

BP spokesman Dan Larson said the company drills only as many wells as it needs to extract the gas and disputed that the work affected the water supply.

Oil and gas companies say it would be unfair to change the rules after they have bought or leased mineral rights, but residents say they also need protection.

"I just wish the surface and mineral owners were equal," Carol Bell said.

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