Colorado Mineral Owner Notification Statutes

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OVERVIEW OF THE COLORADO MINERAL OWNER NOTIFICATION STATUTES

Colorado Revised Statutes §§ 24-65.5-101 – 24-65.5-105

STATUTE	CONTENTS OF THE STATUTE
C.R.S. § 24-65.5-101	Discusses the intent of these statutes to provide a streamlined procedure for giving notice to mineral owners regarding planned surface development, to facilitate the negotiation of a surface use agreements providing for the joint use of the surface, and as mechanism for resolution if agreements cannot be reached.
C.R.S. § 24-65.5-102	Definitions of Terms
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C.R.S. § 24-65.5-103.5	Local Government Approval - What is required for approval of the application for development
C.R.S. § 24-65.5-103.7	Oil and Gas Operations Areas - Special provisions regarding set-backs and required drilling windows required for a "Qualifying surface development" within the "Greater Wattenberg Area" (as defined under C.R.S. § 24-65.5-102)
C.R.S. § 24-65.5-104	Deposit for Incremental Drilling Costs - The amount that must be deposited for incremental drilling costs as to each well in an approved oil and gas operations area that is required to be drilled directionally in order to access a bottom-hole location in a drilling window.
C.R.S. § 24-65.5-105	Enforcement - Remedies

C.R.S. § 24-65.5-103. Notice Requirements.

(1) Not less than thirty (30) days before the date scheduled for the initial public hearing by a local government on an application for development, the applicant shall send notice, by certified mail, return receipt requested, or by a nationally recognized overnight courier, to:

(a) (I) A mineral estate owner who either:

(A) Is identified as a mineral estate owner in the county tax assessor's records, if those records are searchable by parcel number or by section, township, and range numbers or other legally sufficient description; or

(B) Has filed in the office of the county clerk and recorder in which the real property is located a request for notification in the form specified in subsection (3) of this section.

(II) Such notice shall contain the time and place of the initial public hearing, the nature of the hearing, the location and legal description by section, township, and range of the property that is the subject of the hearing, and the name of the applicant.

(b) The local government considering the application for development. Such notice shall contain the name and address of the mineral estate owners to whom notices were sent in accordance with paragraph (a) of this subsection (1).

(1.5) If an applicant files more than one application for development for the same new surface development with a local government, the applicant shall only be required to send notice pursuant to subsection (1) of this section of the initial public hearing scheduled for the first application for development to be considered by the local government. Local governments shall, pursuant to section 24-6-402 (7), provide notice of subsequent hearings to mineral estate owners who register for such notification

(2) (a) The applicant shall identify the mineral estate owners entitled to notice pursuant to this section by examining the records in the office of the county tax assessor and clerk and recorder of the county in which the real property is located, including the appropriate request for notification pursuant to subsection (3) of this section. Notice shall be sent to the last-known address of the mineral estate owner as shown by such records.

(b) If such records do not identify any mineral estate owners, including their addresses of record, the applicant shall be deemed to have acted in good faith and shall not be subject to further obligations under this article. The applicant shall not be liable for any errors or omissions in such records.

(3) A mineral estate owner who requests or desires to obtain notice under this article or the mineral estate owner's agent may file in the office of the county clerk and recorder of the county in which the real property is located a request for notification form that identifies the mineral estate owner's mineral estate and the corresponding surface estate by parcel number and by section, township, and range numbers or other legally sufficient description. The clerk and recorder shall file request for notification forms in the real estate records for the county and shall also keep an index of request for notification forms by section, township, and range numbers or by subdivision lots and blocks.

(4) Prior to convening an initial public hearing on an application for development, a local government shall require the applicant to certify that notice has been provided to the mineral estate owner pursuant to subsection (1) of this section.

(5) A mineral estate owner may waive the right to notice under this section in writing to the applicant. Failure of a mineral estate owner to be identified in the records described in paragraph (a) of subsection (1) of this section or to file a request for notification under subsection (3) of this section shall not waive the right of such mineral estate owner to file an objection with the local government to such application for development no later than thirty days following the initial public hearing for approval of the application for development or to exercise the remedies set forth in section 24-65.5-104.

(6) Before completing the sale of a mineral estate, a mineral estate owner who has received notice as the owner of the mineral estate of a pending public hearing with respect to an application for development pursuant to this section shall notify the buyer of the mineral estate of the existence of the application for development. A transfer of an interest in a mineral estate by a mineral estate owner following the filing of a request for notification pursuant to subsection (3) of this section shall not modify the address to which the applicant may deliver notice under paragraph (a) of subsection (1) of this section until the transferee of such interest has filed an amendment to the request for notification describing the address to which such notices shall be sent.

C.R.S. § 24-65.5-103.3. Local government approval.

(1) A local government shall, as a condition of final approval of an application for development, require the applicant to certify:

(a) That notice has been provided to mineral estate owners pursuant to section 24-65.5-103; and

(b) With respect to qualifying surface developments, that either:

(I) No mineral estate owner has entered an appearance or filed an objection to the proposed application for development within thirty days after the initial public hearing on the application;

(II) The applicant and any mineral estate owners who have filed an objection to the proposed application for development or have otherwise filed an entry of appearance in the initial public hearing regarding such application no later than thirty days following the initial public hearing on the application have executed a surface use agreement related to the property included in the application for development, the provisions of which have been incorporated into the application for development or are evidenced by a memorandum or otherwise recorded in the records of the clerk and recorder of the county in which the property is located so as to provide notice to transferees of the applicant, who shall be bound by such surface use agreements; or

(III) The application for development provides:

(A) Access to mineral operations, surface facilities, flowlines, and pipelines in support of such operations existing when the final public hearing on the application for development is held by means of public roads sufficient to withstand trucks and drilling equipment or thirty-foot-wide access easements;

(B) An oil and gas operations area and existing wellsite locations in accordance with section 24-65.5-103.5; and

(C) That the deposit for incremental drilling costs described in section 24-65.5-103.7 has been made.

(2) A local government approval of an application for development without the certification required by subsection (1) of this section when a mineral owner has timely entered an appearance or filed an objection shall be suspended and shall not constitute a valid final approval until the required certification is provided, any required local government proceedings following notice to affected mineral estate owners are held, and the local government approval is confirmed, amended, or revoked in response to the certification.

Special Provisions for Qualifying Surface Developments within the Greater Wattenberg Area (C.R.S. § 24-65.5-102. Definitions.)

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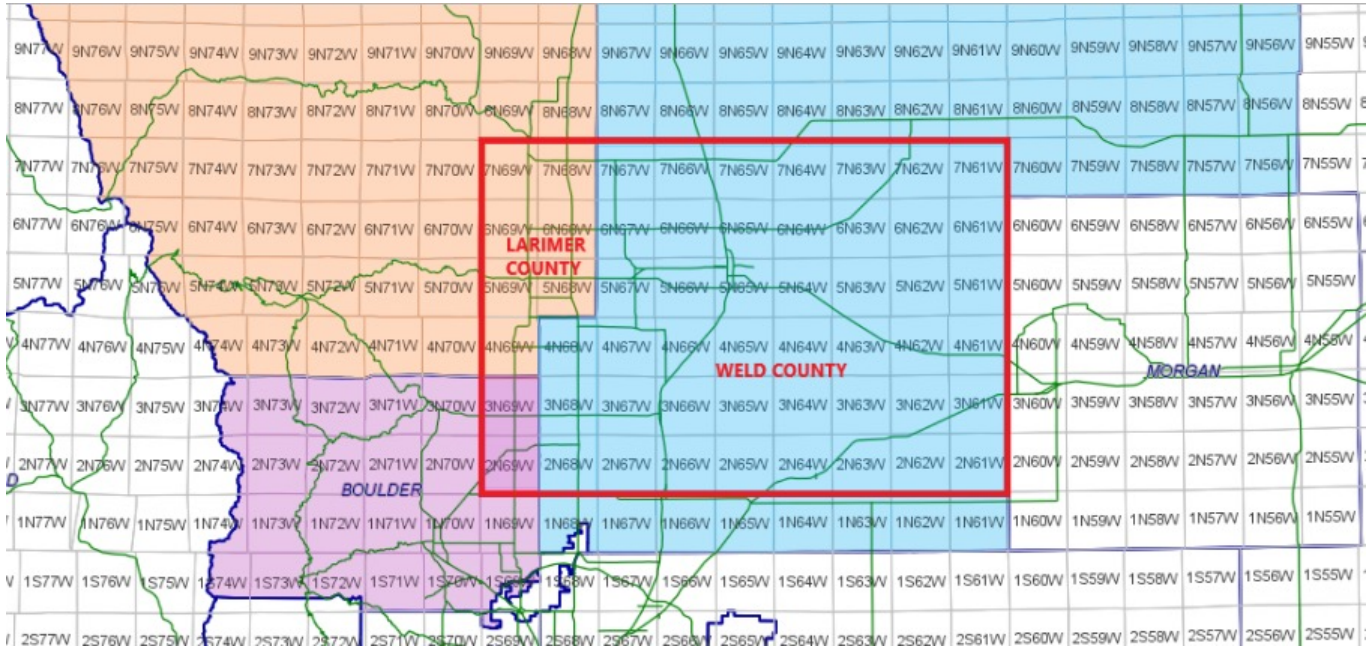
C.R.S. § 24-65.5-102(2.6): "Drilling window" means an area established by the commission within which the surface location of a well or wells may be established. In the greater Wattenberg area, such drilling windows are referred to generally as the "GWA window" and more specifically as the "four-hundred-foot window" and the "eight-hundred-foot window".

C.R.S. § 24-65.5-102(2.8): "Greater Wattenberg area" means those lands from and including townships 2 south to 7 north and ranges 61 west to 69 west of the sixth principal meridian.



C.R.S. § 24-65.5-102(5.7): "Qualifying surface development" means an application for development covering at least one hundred sixty gross acres, plus or minus five percent, within the greater Wattenberg area, including any applications for development filed by affiliates sharing a common boundary, in whole or in part.

C.R.S. § 24-65.5-102(5.8): "Oil and gas operations area" means an area designated pursuant to section 24-65.5-103.5 as the exclusive area for the conduct of oil and gas drilling and production operations and the location of associated production facilities in qualified surface developments.

Special Provisions for Qualifying Surface Developments within the Greater Wattenberg Area (C.R.S. § 24-65.5-103.5. Oil and gas operations areas.)

(1) (a) Within the boundaries of a qualifying surface development, an oil and gas operations area shall meet at least one of the following requirements:

(I) If three (3) or more wells have been or are being drilled in three (3) separate drilling windows in any governmental quarter section, the oil and gas operations area shall provide for a setback not to exceed:	(A) 250-foot radius around one of the existing wells located in each of the three (3) separate drilling windows; (B) 200-foot radius around any other existing wells; (C) 200-foot perimeter around tanks; and (D) An adequate right-of-way or easement for existing and future flowlines and pipelines and a nonexclusive right-of-way for roads reasonably necessary to access the wells and operations located within such areas; or
(II) If two or fewer wells have been or are being drilled in any governmental quarter section, the oil and gas operations area shall provide for:	(A) A 600-foot x 600-foot area, the center of which shall be located no further than 200 feet from the center of the governmental quarter section. The window shall establish a setback from wells and tanks not to exceed 200 feet from any occupied structure, 150 feet of such setback to be located inside the boundary of the oil and gas operations area and 50 feet to be located outside the boundary of the oil and gas operations area. (B) A 200-foot radius around any existing wells located outside of the six-hundred-foot window; (C) A 200-foot perimeter around tanks; and (D) An adequate right-of-way or easement for existing and future flowlines and pipelines and roads reasonably necessary to access the wells and operations located within such areas.

(b) The oil and gas operations area configured under subparagraph (I) or (II) of paragraph (a) of this subsection (1) shall be the exclusive area for the location of wells and associated surface production facilities, including tanks. The approved plat may provide that the outer fifty feet of any setback of two hundred feet or more may be used by the surface owner for underground utilities, sidewalks, trails, and parking and may be landscaped with grasses or shallow-root landscaping and irrigated by sprinklers, all at the cost of the surface owner and without any liability to the mineral estate owner in the event of any damage to such improvements from the resumption or continuation of oil and gas operations. The surface owner shall cooperate with the operator to ensure that any sidewalks, trails, or parking areas within the outer fifty feet of any setback are restricted from public access during active oil and gas operations requiring use of the area by heavy equipment.

(2) A surface owner may not encroach on an oil and gas operations area or interfere with the mineral estate owner's use of an oil and gas operations area or any associated rights of way or easements designated in a plat or other application for development approved for recordation except as specified in this section.

(3) In addition to the criteria specified in subsection (1) of this section, the area included within an oil and gas operations area may be modified or moved as reasonably necessary to take into account legal, topographical, or existing surface development restrictions if such modification or movement does not adversely affect oil and gas operations, but an oil and gas operations area may not be reduced or increased in area.

(4) If the development plan contained in an approved application for development containing an approved oil and gas operations area is vacated, a mineral estate owner owning a mineral estate within the boundaries of such development shall thereafter be free to conduct operations within such boundaries in accordance with article 60 of title 34, C.R.S., and the commission's rules then or thereafter existing and subject to the provisions of any applicable surface use agreement.

(5) Nothing in this section impairs or overrides the authority of the commission to establish, amend, or otherwise regulate with respect to the establishment, modification, or elimination of drilling windows or any other matter within the commission's jurisdiction.

Special Provisions for Qualifying Surface Developments within the Greater Wattenberg Area (C.R.S. § 24-65.5-103.7. Deposit for incremental drilling costs.)

(1) The deposit for incremental drilling costs required under section 24-65.5-103.3 (1)(b)(III)(C) shall be an amount for each well in an approved oil and gas operations area that is required to be drilled directionally in order to access a bottom-hole location in one of the five drilling windows permitted by the commission under its greater Wattenberg rule, 2 CCR 404-1, rule 318A, as in effect on August 3, 2007, excluding directional wells required by the commission's greater Wattenberg rule, 2 CCR 404-1, rule 318A (e), as such rule was in effect on December 31, 2006, to be drilled at the operator's expense, up to a total of four wells per governmental quarter section, and shall be determined in accordance with the following criteria:

(a) The amount deposited by the applicant for incremental drilling costs shall be eighty-seven thousand five hundred dollars per well, which amount shall be increased or decreased on July 1 of each year in accordance with corresponding percentage increases or decreases in the Denver-Aurora-Lakewood consumer price index, or its applicable predecessor or successor index, published by the United States department of labor, bureau of labor statistics.

(b) As a condition of obtaining approval to record the final plat, the applicant shall provide confirmation to the local government that the applicant has deposited into an escrow account maintained at a commercial financial institution approved by the commission the amount determined under paragraph (a) of this subsection (1) to defray incremental drilling costs to be incurred by mineral estate owners for drilling wells to prospective formations accessible from the oil and gas operations area that could otherwise have been vertically drilled within drilling windows established by the commission that are not included in such oil and gas operations area. As an alternative to such deposit, the applicant may post a letter of credit or other security for such costs in such manner as the commission shall determine to be adequate. An applicant's failure to make such deposit shall not otherwise rescind, curtail, abrogate, or restrict any final approval of an application for development. If a directional well is commenced within the oil and gas operations area after final plat approval by the local government and before recordation of the final plat, the operator shall give written notice to the applicant of such commencement and the applicant shall be required to make the escrow deposit required under this section within ten days after the commencement for each well that is so commenced.

(c) At the end of three years after recording the plat, subject to extension for a period of up to one year during the pendency of any federal, state, or local drilling permit filed within such three-year period, any funds in escrow or posted as security for which a claim has not been made by a mineral estate owner shall be released or returned to the applicant or its designated successor.

(d) A mineral estate owner that begins to drill a well pursuant to a drilling permit approved no later than three years after final plat approval, as such period may be extended as provided in paragraph (c) of this subsection (1), is entitled to draw on the incremental drilling cost account the amount of its actual incremental drilling costs up to eighty-seven thousand five hundred dollars per directional well, as such amount may be adjusted pursuant to paragraph (a) of this subsection (1) and by allocation of earned interest, by presenting to the commission confirmation that the well has been drilled directionally and confirmation regarding the amount of incremental drilling costs it has incurred with respect to such well. Incremental drilling costs eligible for reimbursement shall not include a mark-up for overhead, administrative, or managerial costs in excess of the actual costs directly incurred as the result of directional drilling of wells within oil and gas operations areas. No mineral estate owner is entitled to recover more than the amount of incremental drilling costs initially deposited in the escrow account, plus its proportionate share of accrued interest, divided by the number of wells for which the deposit was initially made. Upon the commission's approval of such information, the commission shall issue a directive to the escrow account holder or security holder to release the designated incremental drilling costs for such well to such mineral estate owner.

(e) Exhaustion of the incremental drilling funds in an escrow account or termination of the account shall not modify the availability of designated oil and gas operations areas for further drilling and other oil and gas operations or the protection afforded well sites, tanks, access roads, flowlines, and pipelines pursuant to section 24-65.5-103.5. The commission shall resolve disputes between the applicant and a mineral estate owner regarding the amount of incremental drilling costs to be deposited in escrow or the amount of such costs for which reimbursement is sought.

Enhanced Mineral Owner Notification - Using the Framework of the Colorado Mineral Owner Notification Statutes as a Vehicle For Mineral Coverage

	COLORADO MINERAL OWNER NOTIFICATION STATUTES	STEWART "ENHANCED MINERAL OWNER NOTIFICATION"
Search Requirements	The applicant shall identify the mineral estate owners entitled to notice pursuant to this section by examining the records in the office of the county tax assessor and clerk and recorder of the county in which the real property is located, including the appropriate request for notification pursuant to subsection (3) of this section. Notice shall be sent to the last-known address of the mineral estate owner as shown by such records.	Stewart requires a full mineral title search (from Sovereignty/Patent through a current date/time) using the real property records in the office of the county clerk and recorder in which the real property is located to identify all record mineral owners. If any of the identified mineral owners are deceased, it may be necessary to search outside the county for probate records or information confirming the heirs of the deceased mineral owner's estate.
Notice Requirements	Notice is only required for a mineral owner who either: ▪ Is identified as a mineral owner in the county tax assessor's records; or ▪ Files a request for notification in the office of the county clerk and recorder in which the real property is located. If the records do not identify any mineral owners, including their addresses of record, the applicant shall be deemed to have acted in good faith and shall not be subject to further obligations to provide notice.	Notice in the same form required under C.R.S. § 24-65.5-103 must be provided to all of the record mineral owners identified by the full mineral title search, including the heirs and/or beneficiaries of any deceased mineral owner's estate. Once final approval has been received, a sign must be posted at the property indicating that the application for development has received final approval by the local government to start the tolling of the limitations period for a suit seeking compensatory damages under C.R.S. § 24-65.5-104(1)(a)(III).
Surface Use Agreement Requirements	As a condition to final approval of an application for development, the applicant must certify to the local government they have entered into a surface use agreement with any mineral owners who filed an objection or otherwise filed an entry of appearance no later than thirty (30) days after the initial public hearing. In the application for development provides: ▪ Access to mineral operations, surface facilities, flowlines, and pipelines in support of such operations existing at the time of the final public hearing; ▪ An oil and gas operations area and existing wellsite locations in accordance with C.R.S. § 24-65.5-103.5; and ▪ That the deposit for incremental drilling costs described in C.R.S. § 24-65.5-103.7 has been made. Local government approval without the foregoing certification when a mineral owner has timely entered an appearance or filed an objection shall be suspended and shall not constitute a valid final approval until the required certification is provided.	In addition to the general requirements of the Colorado Mineral Owner Notification statutes, Stewart will require Surface Use Agreements from the following as a condition to approval for mineral coverage: ▪ Any mineral owners who provide a written objection to the development or otherwise file an entry of appearance, regardless of whether the objection is filed within thirty (30) days after the initial public hearing; and ▪ The operators of any active oil/gas wells within the boundaries of the project.

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QUESTIONS?