Drilling rules still go too far

They've improved, but need tweaking

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The Colorado Oil and Gas Conservation Commission has demonstrated a spirit of compromise in the past few months, retreating from several controversial proposals on drilling. But we still think it is poised to reach too far in a few instances, especially in its assertion of broad powers to regulate private property.

If the commission holds fast to its current plan when it rolls out final rules on oil and gas drilling in the next few months, next year's legislature will need to clarify the commission's role.

The legislation requiring the commission to rewrite drilling regulations, HB 1298, gave the commission a mandate to "minimize adverse impacts to wildlife resources." Does that mean the commission can rewrite contracts or bar drilling on behalf of a surface owner? The law doesn't say that, but it's how the commission seems to be acting.

One battle is brewing over split estates - a common situation in Colorado where one person owns the property on the surface and another owns the minerals underneath.

Traditionally, holders of mineral rights could ride rough- shod over surface owners. But a 1997 state Supreme Court decision said mineral holders must accommodate surface owners "to the fullest extent possible consistent with their right to develop the mineral estate."

Under HB 1298, the oil and gas commission's rules on wildlife protection must allow "commission consultation and consent of the affected surface owner." Industry reps and landowners' groups say the rules don't reflect that.

At a hearing on Monday, Acting Director Dave Neslin suggested that the commission could deny a permit to drill in some circumstances if the surface owner fails to agree on a drilling plan with the mineral owner - in other words, a recalcitrant landowner could veto drilling.

Neslin said HB 1298 gave the commission that authority in the interest of "balancing" wildlife protection and energy production. Industry reps disagree, and

threaten to sue the state for "taking" their property if the commission follows through on that threat.

The energy companies have a point. The Supreme Court didn't say mineral holders forfeited their rights if they can't make a deal with surface owners.

Another dust-up revolves around wildlife "mitigation" plans. Kent Holsinger, a Denver attorney representing a large coalition of ranchers and farmers, says his clients worry that wildlife protection plans approved by the commission could override contracts between surface and mineral owners.

If so, that would seem to constitute a "taking" as well.

Colorado's abundant wildlife, and the recreation industries it supports, is a public treasure. But oil and gas supplies are a precious resource, too - and if responsibly developed, they should generate a gusher of tax revenues for years to come.

If the commission can't strike a sensible balance between protecting wildlife and producing energy, next year's legislature may need to pass a new law that does.