

2005 - 2006 #125
Damages for Mineral Extraction

1 Amendment _ is a proposed amendment to the Colorado Constitution that:

- 2 ♦ requires drilling and mining companies to compensate landowners and others
3 for the fair value of damages incurred from mineral extraction activities.

4 **Summary and Analysis**

5 The oil and gas industry has seen significant growth in Colorado recently. Much
6 of this new development of energy resources is occurring on private lands where the land
7 and the minerals are owned by different parties. Companies may own minerals directly or
8 may extract minerals from the ground on behalf of the owner. These companies may make
9 reasonable use of the land to access the minerals. Such use may include constructing a
10 well site, building an access road, and installing production equipment on the property for
11 as long as the well produces - in some cases 20 or 30 years.

12 *How does Colorado regulate the activities of oil and gas drilling companies?*
13 State law requires these companies to provide landowners with 30 days notice of their
14 intent to drill, and to consult in good faith with the landowner on the location of well sites,
15 roads, and production facilities. While not required, companies may negotiate an
16 agreement with the landowner, establishing terms and conditions for the access to the land.
17 If no agreement is reached, companies must provide a bond to protect landowners from
18 unreasonable crop losses or land damage. Companies may either provide an amount per
19 well (\$2,000 on dryland acreage and \$5,000 on irrigated acreage), or a blanket bond of
20 \$25,000 to cover all of their wells statewide.

21 In 2005, 54 percent of permits issued for oil and gas companies involved an
22 agreement between the company and the landowner, while 46 percent were issued under
23 a blanket bond provided by the company. The actual percent of wells covered by
24 agreements is probably higher, as agreements are often negotiated after the well is
25 permitted.

26 *What does Amendment _ do?* Amendment _ requires drilling and mining
27 companies, including oil and gas companies, to compensate landowners and other parties
28 for the fair value of any damages resulting from mineral extraction. The right to claim
29 damages could apply to the owners of either surface or subsurface resources, as well as
30 owners of land adjacent to the drill site. The oil and gas industry would be the industry
31 most impacted by this amendment. For 2005, 4,363 oil and gas drilling permits were

1 issued and there were X producing wells in Colorado. By comparison, X mining permits
2 were issued, and there were X producing mines in Colorado.

3 ***What have other states done?*** At least ten other states have enacted surface
4 damage compensation laws. Of these ten states, two require a signed agreement between
5 the landowner and drilling or mining company, evidence of ongoing negotiations, or
6 adequate financial assurance to cover landowner damages before a drilling permit is issued.
7 The definition of damages varies somewhat among states, but are typically defined as the
8 sum of lost value of agricultural production, lost land value, and lost value of
9 improvements on the land. No other state has damage compensation requirements in its
10 constitution.

11 **Arguments For**

12 1) Amendment _ will help balance the rights of landowners and the mineral
13 industry. For many landowners the equity in their property is their greatest asset.
14 Currently, companies are only required to compensate landowners for damage resulting
15 from unreasonable use of their property. Landowners may not have the resources or
16 knowledge to effectively negotiate agreements with large oil and gas companies. In many
17 cases, neither these agreements nor the required bonds compensate landowners adequately
18 for damages incurred. Damages can include reduced property values, lost agricultural
19 production, polluted water supplies, lost aesthetics, and exposure to toxic materials.
20 Amendment _ ensures that landowners are fairly compensated for the damage they sustain.

21 2) Amendment _ forces drilling and mining companies to act more responsibly
22 toward landowners. Oil and gas companies can afford to compensate landowners for the
23 damage they cause while still making a reasonable return on their investment.
24 Amendment _ will not slow down oil and gas development in Colorado. Instead, it will
25 reduce instances of oil and gas companies offering landowners minimal compensation for
26 damages resulting from drilling operations.

27 **Arguments Against**

28 1) Amendment _ is unnecessary because current law already protects landowners
29 from unreasonable damage caused by oil and gas development. Landowners must be
30 consulted about the location of well sites, roads, and other facilities. State law also
31 protects public health and limits unreasonable crop losses and land damage from drilling
32 operations. Moreover, the measure is broad, with too many questions left unanswered
33 regarding its implementation.

34 2) Amendment _ unfairly requires operators to pay to access a resource that they
35 already own or have been hired to develop. Such added costs may drive companies out of
36 state and hurt Colorado's rural communities that depend on industry jobs. State and local
37 tax revenue may also decline, reducing money available to address public infrastructure

1 needs. In 2005, the tax on oil and gas development provided \$X million for grants to local
2 governments to pay for water resource and other projects.

3 **Estimate of Fiscal Impact**