

THE DUFFORD WALDECK QUARTERLY

A NEWSLETTER FOR OUR CLIENTS

744 HORIZON COURT, SUITE 300, GRAND JUNCTION, COLORADO 81506

PHONE (970) 241-5500

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NEW COLORADO LAW REDEFINES AGRICULTURAL PROPERTY FOR PROPERTY TAXATION

by Willie DeFord

The Colorado General Assembly passed a bill that attempts to more accurately classify agricultural land for purposes of property taxation.

Land that is classified as agricultural is taxed at a much lower rate than land classified as vacant, commercial and industrial, or residential. This lower rate for ag land is to help family farmers who are rich in land but may not have the cash to pay hefty tax bills on their land holdings. Because of the lower tax liability for agricultural land, however, many landowners have sought—and obtained—the agricultural classification for lands that are not strictly or primarily agricultural and thereby saved tens of thousands of dollars in property taxes.

THE DENVER POST published a series of articles showing that many celebrities, including Tom Cruise, Kurt Russell and Goldie Hawn, in Aspen and Telluride and other swanky parts of the state enjoy an agricultural classification on their properties by allowing others to occasionally run livestock on the lands surrounding their residences.

The state initiated a task force in 2010 for recommendations on how to address what many counties considered abuses of the lower agricultural taxes. One of the task force's recommendations was to classify a residence on agricultural land as residential

even if the surrounding land is agricultural. This would only apply if the residence is not itself part of the agricultural operation (as, for example, the residence of the farmer and his or her family). This would address the problem of wealthy landowners allowing someone's cattle or sheep to graze on their otherwise non-agricultural property for as little as one week per year and thereby obtain the agricultural classification.

In a bill sponsored by Rep. Tom Massey, R-Poncha Springs, the Colorado General Assembly took up the recommendation, and the bill, House Bill 11-1146, was signed into law and will take effect January 1, 2012.

The new law changes the definition of "agricultural land" for purposes of property taxation to provide that agricultural land "shall not include two acres or less of land on which a residential improvement is located unless the improvement is integral to an agricultural operation conducted on such land." It remains the case that the land underlying structures that are an integral part of the farm or ranch are classified agricultural and not residential. The actual wording of the new law is vague about the classification of parcels over two acres, whether the two acres surrounding the residence will be carved out and assessed separately (the more likely scenario), or whether parcels over two acres are exempt (in which case the new law is likely to have limited effect).

A residence is considered "integral to an agricultural operation" if "an individual occupying the residential improvement either regularly conducts, supervises, or administers material aspects of the agricultural operation or is the spouse or a parent, grandparent, sibling, or child

of the individual.” In other words, the law allows agricultural classification for a farm residence if it is the farmer’s home, a farm worker’s home, or the home of the farmer’s or farm worker’s immediate family.

Now, assuming the new law can survive a challenge based on the Tax Payers Bill of Rights (TABOR), if Tom Cruise wants to retain the agricultural classification on his Telluride mansion, he’ll have to get his hands dirty.

COGCC LAUNCHES WEBSITE TO INFORM COLORADO ABOUT FRACING

by Matthew Montgomery

Industry estimates that there are millions of barrels of oil and gas trapped deep underground in the Mancos shale deposits that straddle the Utah-Colorado Border. This may be a potential boon to both the nation’s domestic energy supply and local Mesa County economy. But, there’s a large technical problem that stands in the way of getting these valuable natural resources out of the ground. Shale has what scientists call low porosity and permeability, which makes it very difficult to extract the oil and gas trapped within. However, with recent technological advances that combine the benefits of horizontal drilling with a technique known as hydraulic fracturing, extraction may be possible. As a recent article in the WALL STREET JOURNAL explains, “[t]he resulting boom [from fracing] is transforming America’s energy landscape. As recently as 2000, shale gas was 1 percent of America’s gas supplies; today it is 25 percent.”

But the news hasn’t all been positive. Hydraulic fracturing (or fracing as it’s more commonly known) has also ignited a storm of controversy. Fracing is a process of creating small cracks, or fractures, in the underground shale formations. These cracks allow oil and gas to be more easily extracted from the rock, and make the overall drilling process economically viable. But fracing also requires the high-pressure injection of enormous amounts of sand and water—laced with small

amounts of chemicals—deep into the ground; and this has some people concerned. THE ECONOMIST reports that three members of Congress recently released a report saying that between 2005 and 2009, oil and gas companies used more than 2,500 fracing products containing 750 different chemicals, some of which were extremely toxic.

There have also been allegations that fracing can cause unwanted seismic disturbances, such as earthquakes, and that it can lead to the contamination of drinking water. For example, the movie GASLAND showed video of people who were able to light their drinking water on fire because of what they claimed was methane contamination from fracing. In addition, researchers at Duke Univeristy just released a study showing that the average methane concentration of drinking water is 17 times higher in water wells located within a kilometer of acting drilling sites.

But, as a recent article in the NEW YORK TIMES clarified, there has never been a study that shows hydraulic fracturing fluid can rise up a mile or so from the production zone in the shale, through layers of rock, to pollute drinking water in aquifers. However, as the TIMES also explained, fracing is an integral part of a larger drilling process which has caused pollution to drinking water, for example, in April 2011, when a well blowout in Pennsylvania sent fracing fluid into a nearby stream, threatening local surface water.

For those interested in any aspect of this debate, we wanted to make you aware that the Colorado Oil and Gas Conservation Commission (COGCC) recently launched a website (http://cogcc.state.co.us/Announcements/Hot_Topics/Hydraulic_Fracturing/Hydr a_Frac_topics.html) that contains a number of links to a variety of useful resources. There, for example, you will find COGCC documents answering frequently asked questions about fracing, and addressing purported errors in the movie GASLAND, as well as links to the COGCC rules related to fracing and the EPA’s fracing website. Wherever you come down in the debate, we think these will be of use.

At our website (www.dwmk.com) you can find a version of this article that includes hyperlinks to the articles, websites, and reports referenced in this article.

NEW ASSOCIATE, MATT MONTGOMERY, JOINS DWMK

by Kris Nichols

Dufford Waldeck is pleased to welcome a new litigation associate. Matthew A. Montgomery graduated from the University of Colorado School of Law with a Juris Doctor in May of this year after serving as an Associate Editor of the University of Colorado Law Review and receiving an Award for Excellence in Clinical Education.

Before law school Matt obtained a B.S. in Chemistry from Haverford College as well as a Ph.D in Chemical Physics from the University of Colorado. Matt has published a dissertation on *Understanding Adaptive Laser Pulse-Shaping of Two-Photon Emission and Second Harmonic Generation* as well as seven scientific publications. Matt was recently sworn in as a Colorado attorney and counselor at law.

