

Representative Christine F. Watkins proposes the following substitute bill:

SURFACE OWNER PROTECTION ACT

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John G. Mathis

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Surface Owner Protection Act, which establishes procedures for an operator to follow when conducting an oil, gas, or uranium mining operation.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires an oil, gas, or uranium mining operator to:
 - give sufficient notice of the operation to the surface owner;
 - disclose information about the operation to the surface owner;
 - enter into a surface use agreement with the surface owner; and
 - post a bond or other surety in certain circumstances;
- ▶ authorizes the Board of Oil, Gas and Mining to make rules; and
- ▶ provides a cause of action.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 ENACTS:

27 **40-11-101**, Utah Code Annotated 1953

28 **40-11-102**, Utah Code Annotated 1953

29 **40-11-103**, Utah Code Annotated 1953

30 **40-11-104**, Utah Code Annotated 1953

31 **40-11-105**, Utah Code Annotated 1953

32 **40-11-106**, Utah Code Annotated 1953

33 **40-11-107**, Utah Code Annotated 1953

34 **40-11-108**, Utah Code Annotated 1953

35 **40-11-109**, Utah Code Annotated 1953



37 *Be it enacted by the Legislature of the state of Utah:*

38 Section 1. Section **40-11-101** is enacted to read:

39 **CHAPTER 11. SURFACE OWNER PROTECTION ACT**

40 **40-11-101. Title.**

41 This chapter is known as the "Surface Owner Protection Act."

42 Section 2. Section **40-11-102** is enacted to read:

43 **40-11-102. Definitions.**

44 As used in this chapter:

45 (1) (a) "Oil, gas, or uranium mining operation" means an activity affecting the surface
46 that is associated with the exploration, drilling, production, or gathering of oil, gas, or uranium,
47 including the plugging, abandonment, and final reclamation of the affected surface.

48 (b) "Oil, gas, or uranium mining operation" includes the transportation and disposal of
49 produced water and other wastes associated with oil, gas, or uranium development.

50 (2) (a) "Operator" means a person with the legal right to conduct an oil, gas, or
51 uranium mining operation on a property's surface.

52 (b) "Operator" includes the agents, employees, and contractors of that person.

53 (3) "Reclaim" means to restore the surface directly affected by an oil, gas, or uranium
54 mining operation as required by the Board of Oil, Gas and Mining.

55 (4) (a) "Surface owner" means a person who holds:

56 (i) legal title, as shown in the records of the county recorder; or

57 (ii) a long-term lease to use the surface of the property on which an oil, gas, or uranium
58 mining operation is proposed.

59 (b) "Surface owner" does not include:

60 (i) the state;

61 (ii) political subdivisions of the state;

62 (iii) independent entities of the state, as defined in Section 63E-1-102;

63 (iv) the federal government; or

64 (v) an Indian tribe, band, or nation.

65 (5) "Surface use agreement" means an agreement between the operator and surface
66 owner specifying the rights of the surface owner and the obligations of the operator concerning
67 an oil, gas, or uranium mining operation.

68 Section 3. Section **40-11-103** is enacted to read:

69 **40-11-103. Notice of operations -- Proposed surface use and compensation**
70 **agreement -- Offer to negotiate.**

71 (1) An operator shall provide the surface owner reasonable notice before entering the
72 surface property to conduct an oil, gas, or uranium mining operation that does not disturb the
73 surface, including:

74 (a) an inspection;

75 (b) staking;

76 (c) a survey;

77 (d) measurements;

78 (e) exploration; or

79 (f) the general evaluation of a proposed route or site for an oil, gas, or uranium mining
80 operation.

81 (2) An operator shall provide the surface owner at least 40 days' notice before entering
82 the surface property to conduct a surface disturbing oil, gas, or uranium mining operation.

83 (3) The notice required by Subsections (1) and (2) shall include:

84 (a) sufficient disclosure of the planned oil, gas, or uranium mining operation to enable
85 the surface owner to evaluate the effect of the oil, gas, or uranium mining operation on the
86 property;

87 (b) a copy of the Surface Owner Protection Act;

88 (c) the name, address, telephone number, and, if available, facsimile number and
89 electronic mail address of the operator and the operator's authorized representative;

90 (d) a proposed surface use agreement; and

91 (e) an offer to discuss and negotiate in good faith:

92 (i) changes to the proposed operations;

93 (ii) the proposed surface use agreement;

94 (iii) mitigation actions that the surface owner might request; and

95 (iv) compensation for the use of, or any damage sustained to, the surface property.

96 (4) The surface use agreement shall at a minimum address:

97 (a) the design, construction, placement, specification, and maintenance of any
98 equipment, well pad, pipeline, pit, or road;

99 (b) the times and points of entry and exit of the surface property and a plan to preserve
100 the safety and security of the surface owner;

101 (c) the use and impoundment of water on the surface property and any change in the
102 surface water drainage or irrigation;

103 (d) the removal and restoration of plant life;

104 (e) a plan to limit and effectively control precipitation runoff and erosion;

105 (f) a plan to control and manage noise, weeds, dust, traffic, trespass, litter, and
106 interference with the surface owner's use and peaceful enjoyment of the surface property;

107 (g) interim and final reclamation required by the Board of Oil, Gas and Mining; and

108 (h) operator responsibility, liability, and indemnification for injury, harm, and damage
109 to the property or to the surface owner caused by the operator or other persons acting on the
110 operator's behalf.

111 (5) (a) An operator shall provide the notice required by this section by certified mail or
112 hand delivery to the surface owner of record at the address shown by the records of the county
113 recorder at the time that the notice is given.

114 (b) If there is a recorded long-term lease of the surface property, an operator shall
115 provide notice to both the legal title holder and to the long-term lease holder at the addresses
116 shown by the records of the county recorder.

117 (6) (a) Within 20 days of receiving notice, the surface owner shall:

118 (i) accept the proposed surface use agreement; or

119 (ii) reject the proposed surface use agreement and enter into negotiations with the
120 operator, including, if the parties agree, binding arbitration or mediation.

121 (b) Upon acceptance, the surface use agreement is a binding contract between the
122 operator and the surface owner.

123 (7) In the absence of an agreement between a person who holds legal title to the surface
124 property and a person who holds a long-term lease to use the surface property regarding the
125 division of any compensation paid by an operator, the long-term lease holder shall recover only
126 that portion of the compensation attributable to the damage sustained by the long-term lease
127 holder.

128 Section 4. Section **40-11-104** is enacted to read:

129 **40-11-104. Entry without agreement -- Bond.**

130 (1) If the operator and surface owner have not entered into a surface use agreement
131 within 40 days of the surface owner receiving notice, the operator may enter the surface
132 owner's property and conduct an oil, gas, or uranium mining operation after posting a bond or
133 other surety with the Board of Oil, Gas and Mining in addition to the bond required by
134 Subsection 40-6-5(2)(f).

135 (2) The bond or surety shall be:

136 (a) for the benefit of the surface owner;

137 (b) in an amount equal to the greater of:

138 (i) the amount of damages the surface owner is likely to suffer, as estimated by the
139 operator; or

140 (ii) \$25,000; and

141 (c) in the form of cash, letter of credit, or such other form that will allow foreclosure in
142 an action brought according to this chapter without the necessity of first alleging default by the
143 operator followed by a separate foreclosure action on the bond or surety.

144 (3) The Board of Oil, Gas and Mining may adopt rules to administer this section by
145 following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative
146 Rulemaking Act.

147 Section 5. Section **40-11-105** is enacted to read:

148 **40-11-105. Cause of action -- Entry without a surface use and compensation**
149 **agreement -- Damages.**

150 (1) A surface owner may bring an action against an operator who:
151 (a) conducts an oil, gas, or uranium mining operation:
152 (i) without a surface use agreement and fails to post the bond required by Section
153 40-11-104; or

154 (ii) outside the scope of an existing surface use agreement;
155 (b) breaches a surface use agreement; or
156 (c) fails to exercise good faith in estimating the damages required by Section
157 40-11-104.

158 (2) Venue for an action brought under this chapter shall be in the district court for the
159 county in which the oil, gas, or uranium mining operation occurred.

160 (3) In an action brought under this chapter, the court may award the surface owner
161 attorney fees and punitive damages if the court finds that:

162 (a) the operator conducted an oil, gas, or uranium mining operation without providing
163 notice as required by this chapter;

164 (b) the operator conducted an oil, gas, or uranium mining operation without:

165 (i) a surface use agreement; or

166 (ii) posting a bond or other surety as required by this chapter;

167 (c) in posting a bond or other surety, the operator failed to exercise good faith in
168 estimating the damages that would be owed to the surface owner; or

169 (d) the operator conducted an oil, gas, or uranium mining operation outside the scope
170 of the surface use agreement and, when entering into the agreement, had reason to believe that
171 the oil, gas, or uranium mining operation would be conducted outside the scope of the
172 agreement.

173 (4) If necessary, an award for damages under this chapter may also include a court
174 order to foreclose the bond or surety and transfer the proceeds from the foreclosure to the
175 surface owner.

176 (5) Damages awarded according to this chapter do not preclude the surface owner from
177 collecting any additional damages owed because of the operator's subsequent actions.

178 Section 6. Section **40-11-106** is enacted to read:

179 **40-11-106. Statute of limitations.**

180 A surface owner entitled to bring an action under this chapter shall bring the action

181 within six years after the damage has been discovered, or should have been discovered through
182 due diligence by the surface owner, provided that the limitation on bringing an action shall be
183 tolled for a period of six months if a written demand for damages is timely submitted by the
184 surface owner to the operator.

185 Section 7. Section **40-11-107** is enacted to read:

186 **40-11-107. Remedies not exclusive.**

187 The remedies provided by this chapter are not exclusive and do not preclude a person
188 from seeking other remedies allowed by law.

189 Section 8. Section **40-11-108** is enacted to read:

190 **40-11-108. Interpretation.**

191 This chapter shall be interpreted to benefit the surface owner regardless of whether the
192 mineral estate is separate from the surface estate and regardless of who executed the document
193 that gave the operator the right to conduct an oil, gas, or uranium mining operation on the
194 surface.

195 Section 9. Section **40-11-109** is enacted to read:

196 **40-11-109. Applicability.**

197 This chapter applies to all oil, gas, or uranium mining operations commenced on or
198 after May 11, 2010, except:

199 (1) maintenance or ongoing production activities related to an oil or gas well producing
200 or capable of producing oil or gas on May 11, 2010, for which the operator has a valid permit
201 from the Division of Oil, Gas and Mining, provided that:

202 (a) reentries, workovers, and other oil or gas operations requiring a drilling rig or
203 additional waste pits conducted on such a well are subject to this chapter if the activities
204 disturb additional surface; and

205 (b) the duty to reclaim is applicable to such a well except that for activities related to
206 the duty to reclaim, no notice, surface use agreement, or bond or other surety is required;

207 (2) oil, gas, or uranium mining operations conducted within the scope of an agreement,
208 entered into before May 11, 2010, between a surface owner and an operator that sets forth the
209 rights and obligations of the parties in respect to surface activities conducted by the operator;
210 and

211 (3) operations on School and Institutional Trust Lands conducted in accordance with

212 Section 53C-2-409.