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**SURFACE OWNER PROTECTION ACT**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: John G. Mathis**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires an oil or gas 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:**

ENACTS:

**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 or gas operation" means an activity affecting the surface that is associated  
46 with the exploration, drilling, production, or gathering of oil or gas, including the plugging,  
47 abandonment, and final reclamation of the affected surface.

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

50                                (2) (a) "Operator" means a person with the legal right to conduct an oil or gas operation  
51 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 or gas operation  
54 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 or gas operation  
58 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 or gas 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 at least five business days' notice  
72 before entering the surface property to conduct an oil or gas 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 or gas operation.

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

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

83 (a) sufficient disclosure of the planned oil or gas operation to enable the surface owner  
84 to evaluate the effect of the oil or gas operation on the property;

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

86 (c) a copy of the legal documents describing the rights of the operator to conduct an oil  
87 or gas operation on the surface owner's land, including:

- 88 (i) legal title to the mineral rights or a lease or other agreement with the mineral owner;
- 89 (ii) any recorded easement; and

- 90 (iii) a permit by the Division of Oil, Gas and Mining, including a copy of the  
91 reclamation plan;
- 92 (d) the name, address, telephone number, and, if available, facsimile number and  
93 electronic mail address of the operator and the operator's authorized representative;
- 94 (e) a proposed surface use agreement; and
- 95 (f) an offer to discuss and negotiate in good faith:
- 96 (i) changes to the proposed operations;
- 97 (ii) the proposed surface use agreement;
- 98 (iii) mitigation actions that the surface owner might request; and
- 99 (iv) compensation for the use of, or any damage sustained to, the surface property.
- 100 (4) The surface use agreement shall at a minimum address:
- 101 (a) the design, construction, placement, specification, and maintenance of any  
102 equipment, well pad, pipeline, pit, or road;
- 103 (b) the times and points of entry and exit of the surface property and a plan to preserve  
104 the safety and security of the surface owner;
- 105 (c) the use and impoundment of water on the surface property and any change in the  
106 surface water drainage or irrigation;
- 107 (d) the removal and restoration of plant life;
- 108 (e) a plan to limit and effectively control precipitation runoff and erosion;
- 109 (f) a plan to control and manage noise, weeds, dust, traffic, trespass, litter, and  
110 interference with the surface owner's use and peaceful enjoyment of the surface property;
- 111 (g) interim and final reclamation required by the Board of Oil, Gas and Mining; and
- 112 (h) operator responsibility, liability, and indemnification for injury, harm, and damage  
113 to the property or to the surface owner caused by the operator or other persons acting on the  
114 operator's behalf.
- 115 (5) (a) An operator shall provide the notice required by this section by certified mail or  
116 hand delivery to the surface owner of record at the address shown by the records of the county  
117 recorder at the time that the notice is given.
- 118 (b) If there is a recorded long-term lease of the surface property, an operator shall  
119 provide notice to both the legal title holder and to the long-term lease holder at the addresses  
120 shown by the records of the county recorder.

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

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

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

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

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

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

133 **40-11-104. Entry without agreement -- Bond.**

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

138 (2) The bond or surety shall be:

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

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

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

143 (ii) \$25,000; and

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

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

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

151 **40-11-105. Cause of action -- Entry without a surface use and compensation**

152 **agreement -- Damages.**

153 (1) A surface owner may bring an action against an operator who:

154 (a) conducts an oil or gas operation:

155 (i) without a surface use agreement and fails to post the bond required by Section

156 40-11-104; or

157 (ii) outside the scope of an existing surface use agreement;

158 (b) breaches a surface use agreement; or

159 (c) fails to exercise good faith in estimating the damages required by Section

160 40-11-104.

161 (2) Venue for an action brought under this chapter shall be in the district court for the

162 county in which the oil or gas operation occurred.

163 (3) In an action brought under this chapter, the court may award the surface owner

164 attorney fees and punitive damages if the court finds that:

165 (a) the operator conducted an oil or gas operation without providing notice as required

166 by this chapter;

167 (b) the operator conducted an oil or gas operation without:

168 (i) a surface use agreement; or

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

170 (c) in posting a bond or other surety, the operator failed to exercise good faith in

171 estimating the damages that would be owed to the surface owner; or

172 (d) the operator conducted an oil or gas operation outside the scope of the surface use

173 agreement and, when entering into the agreement, had reason to believe that the oil or gas

174 operation would be conducted outside the scope of the agreement.

175 (4) If necessary, an award for damages under this chapter may also include a court

176 order to foreclose the bond or surety and transfer the proceeds from the foreclosure to the

177 surface owner.

178 (5) Damages awarded according to this chapter do not preclude the surface owner from

179 collecting any additional damages owed because of the operator's subsequent actions.

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

181 **40-11-106. Statute of limitations.**

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

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

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

188 **40-11-107. Remedies not exclusive.**

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

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

192 **40-11-108. Interpretation.**

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

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

197 **40-11-109. Applicability.**

198 This chapter applies to all oil and gas operations commenced on or after May 11, 2010,  
199 except:

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

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

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

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

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**Legislative Review Note**  
as of 2-5-10 4:09 PM

**Office of Legislative Research and General Counsel**



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**H.B. 309 - Surface Owner Protection Act**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Businesses and individuals engaged in oil and gas development may incur compliance costs.

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