

1 **SURFACE OWNER PROTECTION ACT**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kevin T. Van Tassell**

5 House Sponsor: John G. Mathis

6

7 **LONG TITLE**

8 **General Description:**

9 This bill establishes provisions relating to oil and gas operations on surface land.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ requires the Board of Oil, Gas, and Mining to establish rules relating to certain
- 14 unreasonable surface land owner losses and damages;
- 15 ▶ establishes rights and responsibilities of surface land owners and owners or
- 16 operators of an oil and gas operation;
- 17 ▶ provides for non-binding mediation; and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **40-6-2**, as last amended by Laws of Utah 2009, Chapter 344

26 **40-6-5**, as last amended by Laws of Utah 1988, Chapter 62

27 ENACTS:



28 **40-6-20**, Utah Code Annotated 1953

29 **40-6-21**, Utah Code Annotated 1953



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

32 Section 1. Section **40-6-2** is amended to read:

33 **40-6-2. Definitions.**

34 For the purpose of this chapter:

35 (1) "Board" means the Board of Oil, Gas, and Mining.

36 (2) "Correlative rights" means the opportunity of each owner in a pool to produce his
37 just and equitable share of the oil and gas in the pool without waste.

38 (3) "Condensate" means hydrocarbons, regardless of gravity, that:

39 (a) occur naturally in the gaseous phase in the reservoir; and

40 (b) are separated from the natural gas as liquids through the process of condensation
41 either in the reservoir, in the wellbore, or at the surface in field separators.

42 (4) "Consenting owner" means an owner who consents in advance to the drilling and
43 operation of a well and agrees to bear his proportionate share of the costs of the drilling and
44 operation of the well.

45 (5) "Crude oil" means hydrocarbons, regardless of gravity, that:

46 (a) occur naturally in the liquid phase in the reservoir; and

47 (b) are produced and recovered at the wellhead in liquid form.

48 (6) (a) "Gas" means natural gas, as defined in Subsection (9), natural gas liquids, as
49 defined in Subsection (10), other gas, as defined in Subsection [~~(14)~~] (16), or any mixture of
50 them.

51 (b) "Gas" does not include any gaseous or liquid substance processed from coal, oil
52 shale, or tar sands.

53 (7) "Illegal oil" or "illegal gas" means oil or gas that has been produced from any well
54 within the state in violation of this chapter or any rule or order of the board.

55 (8) "Illegal product" means any product derived in whole or in part from illegal oil or
56 illegal gas.

57 (9) (a) "Natural gas" means hydrocarbons that occur naturally in the gaseous phase in
58 the reservoir and are produced and recovered at the wellhead in gaseous form, except natural

59 gas liquids as defined in Subsection (10) and condensate as defined in Subsection (3).

60 (b) "Natural gas" includes coalbed methane gas.

61 (10) "Natural gas liquids" means hydrocarbons, regardless of gravity, that are separated
62 from natural gas as liquids in gas processing plants through the process of condensation,
63 absorption, adsorption, or other methods.

64 (11) "Nonconsenting owner" means an owner who after written notice does not consent
65 in advance to the drilling and operation of a well or agree to bear his proportionate share of the
66 costs.

67 (12) (a) "Oil" means crude oil, as defined in Subsection (5), condensate, as defined in
68 Subsection (3), or any mixture of them.

69 (b) "Oil" does not include any gaseous or liquid substance processed from coal, oil
70 shale, or tar sands.

71 (13) "Oil and gas operations" means to explore for, develop, or produce oil and gas.

72 ~~[(13)]~~ (14) (a) "Oil and gas proceeds" means any payment that:

73 (i) derives from oil and gas production from any well located in the state;

74 (ii) is expressed as a right to a specified interest in the:

75 (A) cash proceeds received from the sale of the oil and gas; or

76 (B) the cash value of the oil and gas; and

77 (iii) is subject to any tax withheld from the payment pursuant to law.

78 (b) "Oil and gas proceeds" includes a royalty interest, overriding royalty interest,
79 production payment interest, or working interest.

80 (c) "Oil and gas proceeds" does not include a net profits interest or other interest the
81 extent of which cannot be determined with reference to a specified share of:

82 (i) the cash proceeds received from the sale of the oil and gas; or

83 (ii) the cash value of the oil and gas.

84 (15) "Operator" means a person who has been designated by the owners or the board to
85 operate a well or unit.

86 ~~[(14)]~~ (16) (a) "Other gas" means nonhydrocarbon gases that:

87 (i) occur naturally in the gaseous phase in the reservoir; or

88 (ii) are injected into the reservoir in connection with pressure maintenance, gas cycling,
89 or other secondary or enhanced recovery projects.

90 (b) "Other gas" includes hydrogen sulfide, carbon dioxide, helium, and nitrogen.

91 ~~[(15)]~~ (17) "Owner" means ~~[the]~~ a person who has the right:

92 (a) to drill into and produce from a reservoir; and

93 (b) appropriate the oil and gas produced for himself or for himself and others.

94 ~~[(16) "Operator" means the person who has been designated by the owners or the board~~
95 ~~to operate a well or unit.]~~

96 ~~[(17)]~~ (18) "Payor" means the person who undertakes to distribute oil and gas proceeds
97 to the persons entitled to them, whether as the first purchaser of that production, as operator of
98 the well from which the production was obtained, or as lessee under the lease on which royalty
99 is due.

100 ~~[(18)]~~ (19) "Pool" means an underground reservoir containing a common accumulation
101 of oil or gas or both. Each zone of a general structure that is completely separated from any
102 other zone in the structure is a separate pool. "Common source of supply" and "reservoir" are
103 synonymous with "pool."

104 ~~[(19)]~~ (20) "Pooling" means the bringing together of separately owned interests for the
105 common development and operation of a drilling unit.

106 ~~[(20)]~~ (21) "Producer" means the owner or operator of a well capable of producing oil
107 and gas.

108 ~~[(21)]~~ (22) "Product" means any commodity made from oil and gas.

109 (23) "Surface land" means privately owned land:

110 (a) overlying privately owned oil and gas resources;

111 (b) upon which oil and gas operations are conducted; and

112 (c) owned by a surface land owner.

113 (24) (a) "Surface land owner" means a person who owns, in fee simple absolute, all or
114 part of the surface land as shown by the records of the county where the surface land is located.

115 (b) "Surface land owner" does not include the surface land owner's lessee, renter,
116 tenant, or other contractually related person.

117 (25) "Surface land owner's property" means a surface land owner's:

118 (a) surface land;

119 (b) crops on the surface land; and

120 (c) existing improvements on the surface land.

121 (26) "Surface use agreement" means an agreement between an owner or operator and a
122 surface land owner addressing:

123 (a) the use and reclamation of surface land owned by the surface land owner; and

124 (b) compensation for damage to the surface land caused by oil and gas operations that
125 result in:

126 (i) loss of the surface land owner's crops on the surface land;

127 (ii) loss of value of existing improvements owned by the surface land owner on the
128 surface land; and

129 (iii) permanent damage to the surface land.

130 [~~22~~] (27) "Waste" means:

131 (a) the inefficient, excessive, or improper use or the unnecessary dissipation of oil or
132 gas or reservoir energy;

133 (b) the inefficient storing of oil or gas;

134 (c) the locating, drilling, equipping, operating, or producing of any oil or gas well in a
135 manner that causes:

136 (i) a reduction in the quantity of oil or gas ultimately recoverable from a reservoir
137 under prudent and economical operations;

138 (ii) unnecessary wells to be drilled; or

139 (iii) the loss or destruction of oil or gas either at the surface or subsurface; or

140 (d) the production of oil or gas in excess of:

141 (i) transportation or storage facilities; or

142 (ii) the amount reasonably required to be produced as a result of the proper drilling,
143 completing, testing, or operating of a well or otherwise utilized on the lease from which it is
144 produced.

145 Section 2. Section **40-6-5** is amended to read:

146 **40-6-5. Jurisdiction of board -- Rules.**

147 (1) The board has jurisdiction over all persons and property necessary to enforce this
148 chapter. The board shall enact rules in accordance with the Utah Administrative Rulemaking
149 Act.

150 (2) The board shall adopt rules and make orders as necessary to administer the
151 following provisions:

152 (a) Ownership of all facilities for the production, storage, treatment, transportation,
153 refining, or processing of oil and gas shall be identified.

154 (b) Well logs, directional surveys, and reports on well location, drilling, and production
155 shall be made and filed with the division. Logs of wells marked "confidential" shall be kept
156 confidential for one year after the date on which the log is required to be filed, unless the
157 operator gives written permission to release the log at an earlier date. Production reports shall
158 be:

- 159 (i) filed monthly;
- 160 (ii) accurate; and
- 161 (iii) in a form that reasonably serves the needs of state agencies and private fee owners.

162 (c) Monthly reports from gas processing plants shall be filed with the division.

163 (d) Wells shall be drilled, cased, operated, and plugged in such manner as to prevent:

164 (i) the escape of oil, gas, or water out of the reservoir in which they are found into
165 another formation;

166 (ii) the detrimental intrusion of water into an oil or gas reservoir;

167 (iii) the pollution of fresh water supplies by oil, gas, or salt water;

168 (iv) blowouts;

169 (v) cavings;

170 (vi) seepages; [~~and~~]

171 (vii) fires[-]; and

172 (viii) unreasonable:

173 (A) loss of a surface land owner's crops on surface land;

174 (B) loss of value of existing improvements owned by a surface land owner on surface
175 land; and

176 (C) permanent damage to surface land.

177 (e) The drilling of wells shall not commence without an adequate and approved supply
178 of water as required by Title 73, Chapter 3, Appropriation. This provision is not intended to
179 impose any additional legal requirements, but to assure that existing legal requirements
180 concerning the use of water have been met prior to the commencement of drilling.

181 (f) The operator shall furnish a reasonable performance bond or other good and
182 sufficient surety, conditioned for the performance of the duty to:

- 183 (i) plug each dry or abandoned well;
- 184 (ii) repair each well causing waste or pollution; [~~and~~]
- 185 (iii) maintain and restore the well site[-]; and
- 186 (iv) except as provided in Subsection (8), protect a surface land owner against
- 187 unreasonable:
- 188 (A) loss of a surface land owner's crops on surface land;
- 189 (B) loss of value of existing improvements owned by a surface land owner on surface
- 190 land; and
- 191 (C) permanent damage to surface land.
- 192 (g) Production from wells shall be separated into oil and gas and measured by means
- 193 and upon standards that will be prescribed by the board and will reflect current industry
- 194 standards.
- 195 (h) Crude oil obtained from any reserve pit, disposal pond or pit, or similar facility, and
- 196 any accumulation of nonmerchantable waste crude oil shall be treated and processed, as
- 197 prescribed by the board.
- 198 (i) Any person who produces, sells, purchases, acquires, stores, transports, refines, or
- 199 processes oil or gas or injects fluids for cycling, pressure maintenance, secondary or enhanced
- 200 recovery, or salt water disposal in this state shall maintain complete and accurate records of the
- 201 quantities produced, sold, purchased, acquired, stored, transported, refined, processed, or
- 202 injected for a period of at least six years. The records shall be available for examination by the
- 203 board or its agents at any reasonable time. Rules enacted to administer this subsection shall be
- 204 consistent with applicable federal requirements.
- 205 (j) Any person with an interest in a lease shall be notified when all or part of that
- 206 interest in the lease is sold or transferred.
- 207 (3) The board has the authority to regulate:
- 208 (a) all operations for and related to the production of oil or gas including:
- 209 (i) drilling, testing, equipping, completing, operating, producing, and plugging of
- 210 wells; and
- 211 (ii) reclamation of sites;
- 212 (b) the spacing and location of wells;
- 213 (c) operations to increase ultimate recovery, such as:

- 214 (i) cycling of gas;
- 215 (ii) the maintenance of pressure; and
- 216 (iii) the introduction of gas, water, or other substances into a reservoir;
- 217 (d) the disposal of salt water and oil-field wastes;
- 218 (e) the underground and surface storage of oil, gas, or products; and
- 219 (f) the flaring of gas from an oil well.
- 220 (4) For the purposes of administering this chapter, the board may designate:
- 221 (a) wells as:
- 222 (i) oil wells; or
- 223 (ii) gas wells; and
- 224 (b) pools as:
- 225 (i) oil pools; or
- 226 (ii) gas pools.
- 227 (5) The board has exclusive jurisdiction over:
- 228 (a) class II injection wells, as defined by the federal Environmental Protection Agency
- 229 or any successor agency; and
- 230 (b) pits and ponds in relation to these injection wells.
- 231 (6) The board has jurisdiction:
- 232 (a) to hear any questions regarding multiple mineral development conflicts with oil and
- 233 gas operations if there:
- 234 (i) is potential injury to other mineral deposits on the same lands; or
- 235 (ii) are simultaneous or concurrent operations conducted by other mineral owners or
- 236 lessees affecting the same lands; and
- 237 (b) to enter its order or rule with respect to those questions.
- 238 (7) The board has enforcement powers with respect to operators of minerals other than
- 239 oil and gas as are set forth in Section 40-6-11, for the sole purpose of enforcing multiple
- 240 mineral development issues.
- 241 (8) The provisions of Subsection (2)(f)(iv) do not apply if the surface land owner is a
- 242 party to, or a successor of a party to:
- 243 (a) a lease of the underlying privately owned oil and gas;
- 244 (b) a surface use agreement applicable to the surface land owner's surface land; or

245 (c) a contract, waiver, or release addressing an owner's or operator's use of the surface
246 land owner's surface land.

247 Section 3. Section **40-6-20** is enacted to read:

248 **40-6-20. Use of surface land by owner or operator.**

249 (1) An owner or operator may:

250 (a) enter onto surface land under which the owner or operator holds rights to conduct
251 oil and gas operations; and

252 (b) use the surface land:

253 (i) to the extent reasonably necessary to conduct oil and gas operations; and

254 (ii) consistent with allowing the surface land owner the greatest possible use of the
255 surface land owner's property, to the extent that the surface land owner's use does not interfere
256 with the owner's or operator's oil and gas operations.

257 (2) Subject to Subsection (3), except as is reasonably necessary to conduct oil and gas
258 operations, an owner or operator shall:

259 (a) mitigate the effects of accessing the surface land owner's surface land;

260 (b) minimize interference with the surface land owner's use of the surface land owner's
261 property; and

262 (c) compensate a surface land owner for unreasonable:

263 (i) loss of a surface land owner's crops on the surface land;

264 (ii) loss of value to existing improvements owned by a surface land owner on the
265 surface land; and

266 (iii) permanent damage to the surface land.

267 (3) An owner or operator is not required to:

268 (a) obtain location or spacing exceptions from the division or board; or

269 (b) utilize directional or horizontal drilling techniques that are not:

270 (i) technologically feasible;

271 (ii) economically practicable; or

272 (iii) reasonably available.

273 (4) The requirements of Subsection (2) do not apply to the extent that they conflict
274 with or impair a contractual provision relevant to an owner's or operator's use of surface land
275 for oil and gas operations.

276 (5) (a) The provisions of this section do not prevent:
277 (i) a person from seeking a remedy allowed by law; or
278 (ii) an owner or operator and a surface land owner from addressing the use of surface
279 land for oil and gas operations through:

- 280 (A) a lease;
- 281 (B) a surface use agreement; or
- 282 (C) another written contract.

283 (b) An agreement described in Subsection (5)(a)(ii) shall control:
284 (i) the use of surface land for oil and gas operations; and
285 (ii) compensation for damage to the surface land caused by oil and gas operations.

286 Section 4. Section **40-6-21** is enacted to read:

287 **40-6-21. Mediation.**

288 (1) A surface land owner and an owner or operator may request non-binding mediation
289 by providing written notice to the other party, if:

- 290 (a) they are unable to agree on the amount of damages for unreasonable:
291 (i) crop loss on the surface land;
292 (ii) loss of value to existing improvements owned by the surface land owner on the
293 surface land; or

- 294 (iii) permanent damage to the surface land; and
295 (b) the dispute over damages described in Subsection (1)(a) relates to an application for
296 a permit to drill submitted by the owner or operator to the division on or after July 1, 2012.

297 (2) The division and the Utah Department of Agriculture and Food shall agree on, and
298 maintain a list of, mediators qualified to mediate disputes between an owner or operator and a
299 surface land owner.

300 (3) An owner or operator and a surface land owner may mutually select a mediator
301 from:

- 302 (a) the list maintained under Subsection (2); or
- 303 (b) any other source.

304 (4) The surface land owner and the owner or operator shall equally share the cost of the
305 mediator's services.

306 (5) The provisions of this section do not prevent or delay an owner or operator from

307 conducting oil and gas operations in accordance with applicable law.

Legislative Review Note
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Office of Legislative Research and General Counsel