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HOUSE BILL 437

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Andy Nuñez

AN ACT

RELATING TO THE PRODUCTION OF OIL AND GAS; ENACTING THE SURFACE OWNERS PROTECTION ACT; STATING CERTAIN DUTIES OWED BY OIL AND GAS OPERATORS TO SURFACE OWNERS; REQUIRING NOTICE TO THE SURFACE OWNER OF OIL AND GAS OPERATIONS; REQUIRING A BOND OR OTHER SURETY IN CERTAIN CIRCUMSTANCES; PROVIDING A CAUSE OF ACTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Surface Owners Protection Act".

Section 2. DEFINITIONS.--As used in the Surface Owners Protection Act:

A. "oil and gas operations" means activities affecting the surface associated with exploration, drilling, production or gathering of oil or gas, and includes the

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1 transportation and disposal of produced water and other wastes
2 associated with oil and gas exploration, drilling, production
3 or gathering. "Oil and gas operations" includes the full range
4 of development activity from exploration through plugging,
5 abandonment and final reclamation of the affected surface;

6 B. "operator" means a person with the legal right
7 to conduct oil and gas operations on the surface of a property
8 and includes the agents, employees and contractors of that
9 person;

10 C. "reclaim" means to restore the surface directly
11 affected by oil and gas operations, as closely as reasonably
12 practicable, to the condition that existed prior to oil and gas
13 operations, or as otherwise agreed to in writing by the
14 operator and surface owner;

15 D. "surface owner" means a person who holds legal
16 or equitable title, as shown in the records of the county
17 clerk, to the surface of the property on which oil and gas
18 operations are to take place; and

19 E. "surface use and compensation agreement" means
20 an agreement between the operator and surface owner specifying
21 the rights and obligations of the surface owner and the
22 operator concerning oil and gas operations.

23 Section 3. COMPENSATION AND LIABILITY FOR OIL AND GAS
24 OPERATIONS.--

25 A. An operator shall compensate the surface owner

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1 for the use of the surface owner's property and any damages
2 sustained by the surface owner or the tenant of the surface
3 owner as a direct result of the operator's oil and gas
4 operations, including:

5 (1) lost agricultural production and the lost
6 income derived therefrom;

7 (2) diminished land value;

8 (3) lost use of and access to the land;

9 (4) lost or diminished value of improvements;

10 (5) harm to the watershed, aquifers or water
11 supplies on or underneath the property; and

12 (6) the costs of reclamation if the operator
13 fails to reclaim the surface properly, even though the cost of
14 reclamation may exceed the fair market value of the damaged
15 surface.

16 B. An operator has a duty to reclaim all surface
17 directly affected by the operator's oil and gas operations.

18 C. The liability established or confirmed by this
19 section is intended to compensate the surface owner for
20 damages, including diminished value and loss of use. Any
21 attempted reservation or assignment of the compensation from
22 the surface estate, except to a tenant of the surface estate,
23 is null and void.

24 D. In the absence of an agreement between the
25 surface owner and a tenant of the surface estate regarding the

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1 division of compensation paid to satisfy the liability
2 established or confirmed by this section, the tenant shall be
3 entitled to recover from the surface owner only that portion of
4 the compensation attributable to the tenant's share of the
5 damages sustained.

6 Section 4. NOTICE OF OPERATIONS--PROPOSED SURFACE USE AND
7 COMPENSATION AGREEMENT--OFFER TO NEGOTIATE.--

8 A. Prior to initial entry upon the land for
9 activities that do not disturb the surface, including
10 inspections, staking, surveys, measurements and general
11 evaluation of proposed routes and sites for oil and gas
12 operations, the operator shall provide at least five business
13 days' notice by certified mail or hand delivery to the surface
14 owner.

15 B. No less than forty days before first entering
16 the surface of the land to conduct oil and gas operations, an
17 operator shall, by certified mail or hand delivery, give the
18 surface owner notice of the planned oil and gas operations.

19 The notice shall include:

20 (1) sufficient disclosure of the planned oil
21 and gas operations to enable the surface owner to evaluate the
22 effect of the operations on the property;

23 (2) a copy of the Surface Owners Protection
24 Act;

25 (3) the name, address, telephone number and,

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1 if available, facsimile number and electronic mail address of
2 the operator and the operator's authorized representative;

3 (4) a proposed surface use and compensation
4 agreement addressing, at a minimum, the following issues:

5 (a) placement, specifications,
6 maintenance and design of well pads, gathering pipelines and
7 roads to be constructed for oil and gas operations;

8 (b) points of entry upon the surface of
9 the land for oil and gas operations and precautions to preserve
10 the safety and security of the surface owner;

11 (c) construction, maintenance and
12 placement of all pits and equipment used or planned for oil and
13 gas operations;

14 (d) use and impoundment of water on the
15 surface of the land;

16 (e) removal and restoration of plant
17 life;

18 (f) surface water drainage changes
19 caused by oil and gas operations;

20 (g) erosion control and actions to limit
21 and effectively control precipitation runoff and erosion;

22 (h) control and management of noise,
23 weeds, dust, traffic, trespass, litter and interference with
24 the surface owner's use and peaceful enjoyment of the surface
25 owner's property;

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1 (i) interim and final reclamation;
2 (j) best surface use practices and
3 minimization of surface damage and impacts to the land, water,
4 value and peaceful enjoyment of the property;

5 (k) operator responsibility and
6 liability and indemnification for injury, harm and damages to
7 the property or to the surface owner caused by the operator's
8 contractors, agents, representatives or others acting on the
9 operator's behalf;

10 (l) terms of ingress and egress; and

11 (m) an offer of compensation that the
12 operator will pay to the surface owner for use of the surface
13 and for damages to the surface resulting from the oil and gas
14 operations conducted pursuant to the surface use and
15 compensation agreement. The offer may be in the form of a
16 lump-sum payment, periodic installments paid over the time that
17 the oil and gas operations will take place or a formula that
18 will determine the proposed method and extent of the
19 compensation; and

20 (5) an offer to discuss and negotiate in good
21 faith any changes to the proposed operations, the proposed
22 surface use and compensation agreement or mitigation actions
23 that the surface owner might request.

24 C. The notices required by this section shall be
25 given to the surface owner of record at the address shown by

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1 the records of the county clerk at the time that the notice is
2 given. If legal title and equitable title are not held by the
3 same person, notice shall be given to both the holder of legal
4 title and to the holder of equitable title at the addresses
5 shown by the records of the county clerk at the time that the
6 notice is given.

7 D. Upon receipt of the notice required by
8 Subsection B of this section, the surface owner may:

9 (1) within twenty days of receiving the
10 notice, accept the proposed surface use and compensation
11 agreement, including the offer of compensation. Upon
12 acceptance, the surface use and compensation agreement and the
13 offer of compensation shall be construed to be a binding
14 contract between the operator and the surface owner; or

15 (2) reject the offer of settlement and enter
16 into negotiations with the operator, including, if the parties
17 agree, binding arbitration or mediation.

18 Section 5. ENTRY WITHOUT AGREEMENT--BOND.--If, after
19 forty days from a surface owner receiving notice pursuant to
20 Subsection B of Section 4 of the Surface Owners Protection Act,
21 no surface use and compensation agreement has been entered
22 into, the operator may enter the surface owner's property and
23 conduct oil and gas operations after posting a bond or other
24 surety with the oil conservation division of the energy,
25 minerals and natural resources department. Pursuant to rules

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1 of the oil conservation commission, the bond or surety shall
2 be:

3 A. for the benefit of the surface owner;

4 B. in an amount equal to the greater of:

5 (1) the compensation, as estimated by the
6 operator, that will be owed to the surface owner for the
7 estimated damages caused by the oil and gas operations; or

8 (2) twenty-five thousand dollars (\$25,000);

9 and

10 C. in the form of cash, letter of credit, or such
11 other form that will allow foreclosure in an action brought
12 pursuant to Section 6 of the Surface Owners Protection Act
13 without the necessity of first alleging default by the operator
14 followed by a separate foreclosure action on the bond or
15 surety.

16 Section 6. CAUSE OF ACTION--ENTRY WITHOUT A SURFACE USE
17 AND COMPENSATION AGREEMENT--DAMAGES.--

18 A. A surface owner may bring an action pursuant to
19 the provisions of this section against an operator who conducts
20 oil and gas operations without a surface use and compensation
21 agreement or outside the scope of an existing surface use and
22 compensation agreement.

23 B. At the option of the surface owner, venue for an
24 action brought pursuant to this section may be in the district
25 court for the county of Santa Fe, the district court for the

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1 county in which the oil and gas operations occurred or the
2 district court for the county in which the surface owner
3 resides.

4 C. In an action brought pursuant to this section,
5 damages and compensation due the surface owner shall be a
6 question of fact, based upon the duty owed to the surface owner
7 by the operator and any other relevant factors.

8 D. If, in an action brought pursuant to this
9 section, the court awards compensation to the surface owner,
10 the court may also award the surface owner attorney fees and
11 punitive damages if the court finds that:

12 (1) the operator conducted oil and gas
13 operations without providing notice as required by Subsection B
14 of Section 4 of the Surface Owners Protection Act;

15 (2) the operator conducted oil and gas
16 operations without a surface use and compensation agreement and
17 without posting a bond or other surety as required by Section 5
18 of the Surface Owners Protection Act;

19 (3) in posting a bond or other surety pursuant
20 to Section 5 of the Surface Owners Protection Act, the operator
21 failed to exercise good faith in estimating the compensation
22 that would be owed to the surface owner for damages; or

23 (4) the operator conducted oil and gas
24 operations outside the scope of a surface use and compensation
25 agreement and, when entering into the agreement, had reason to

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1 believe that oil and gas operations would be conducted outside
2 the scope of the agreement.

3 E. If necessary, an award for compensation pursuant
4 to this section may also include a court order to the oil
5 conservation division of the energy, minerals and natural
6 resources department to foreclose the bond or surety and
7 transfer the proceeds from the foreclosure to the surface
8 owner.

9 F. Damages awarded pursuant to this section shall
10 not preclude the surface owner from collecting any additional
11 damages caused by subsequent actions of the operator.

12 Section 7. STATUTE OF LIMITATIONS.--A surface owner
13 entitled to bring an action pursuant to Section 6 of the
14 Surface Owners Protection Act shall bring the action within six
15 years after the damage has been discovered, or should have been
16 discovered through due diligence, by the surface owner,
17 provided that the limitation on bringing an action shall be
18 tolled for a period of six months if a written demand for
19 compensation for damages is timely submitted by the surface
20 owner to the operator.

21 Section 8. CAUSE OF ACTION BASED ON SURFACE USE AND
22 COMPENSATION AGREEMENT--VENUE.--A cause of action for breach of
23 a surface use and compensation agreement shall be in the same
24 manner as all other actions based on contract except that venue
25 may, at the option of the plaintiff, lie in the district court

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1 for the county of Santa Fe.

2 Section 9. REMEDIES NOT EXCLUSIVE.--The remedies provided
3 by the Surface Owners Protection Act are not exclusive and do
4 not preclude a person from seeking other remedies allowed by
5 law.

6 Section 10. INTERPRETATION OF ACT.--The Surface Owners
7 Protection Act shall be interpreted to benefit surface owners
8 regardless of whether the mineral estate was separate from the
9 surface estate and regardless of who executed the document that
10 gave the operator the right to conduct oil and gas operations
11 on the surface.

12 Section 11. TEMPORARY PROVISION--APPLICABILITY.--The
13 provisions of the Surface Owners Protection Act apply to all
14 oil and gas operations commenced on or after July 1, 2006
15 except:

16 A. maintenance and ongoing production activities
17 related to an oil or gas well producing or capable of producing
18 oil or gas on June 30, 2006 for which the operator has a valid
19 permit from the oil conservation division of the energy,
20 minerals and natural resources department, provided that:

21 (1) reentries, workovers and other oil and gas
22 operations requiring a drilling rig or additional waste pits
23 conducted on such a well are subject to that act if the
24 activities disturb additional surface; and

25 (2) the duty to reclaim, as stated in

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1 Subsection B of Section 3 of that act, is applicable to such a
2 well except that, for activities related to the duty to
3 reclaim, no notice, surface use and compensation agreement or
4 bond or other surety is required; and

5 B. oil and gas operations conducted within the
6 scope of an agreement, entered into prior to July 1, 2006,
7 between a surface owner and an operator that sets forth the
8 rights and obligations of the parties in respect to surface
9 activities conducted by the operator.

10 Section 12. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2006.