

Why do they want to drill for oil and gas on my land?

New Mexico is rich in oil and gas resources. Several areas in the state are experiencing an unprecedented energy development boom. While this production has provided economic benefit to these counties and the state of New Mexico, it has also resulted in negative impacts to the people and environment of our state. One of the issues created by this boom has been significant conflict between surface owners and oil and gas operators over competing uses of the land.

In many parts of New Mexico, rights to the oil and gas were leased some years ago. As of mid-2007, market prices for oil and gas continue to be near their historic highs. As a consequence, companies that have leased the rights to produce oil and gas are aggressively exploring for and trying to produce those resources in New Mexico.

What is a split-estate?

Split estate means that the owner of the surface land does not own the minerals underneath that surface; that is, the surface and mineral estates have been “split.” In many instances, this “split” occurred before the current owners of the surface purchased the land.



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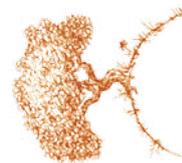
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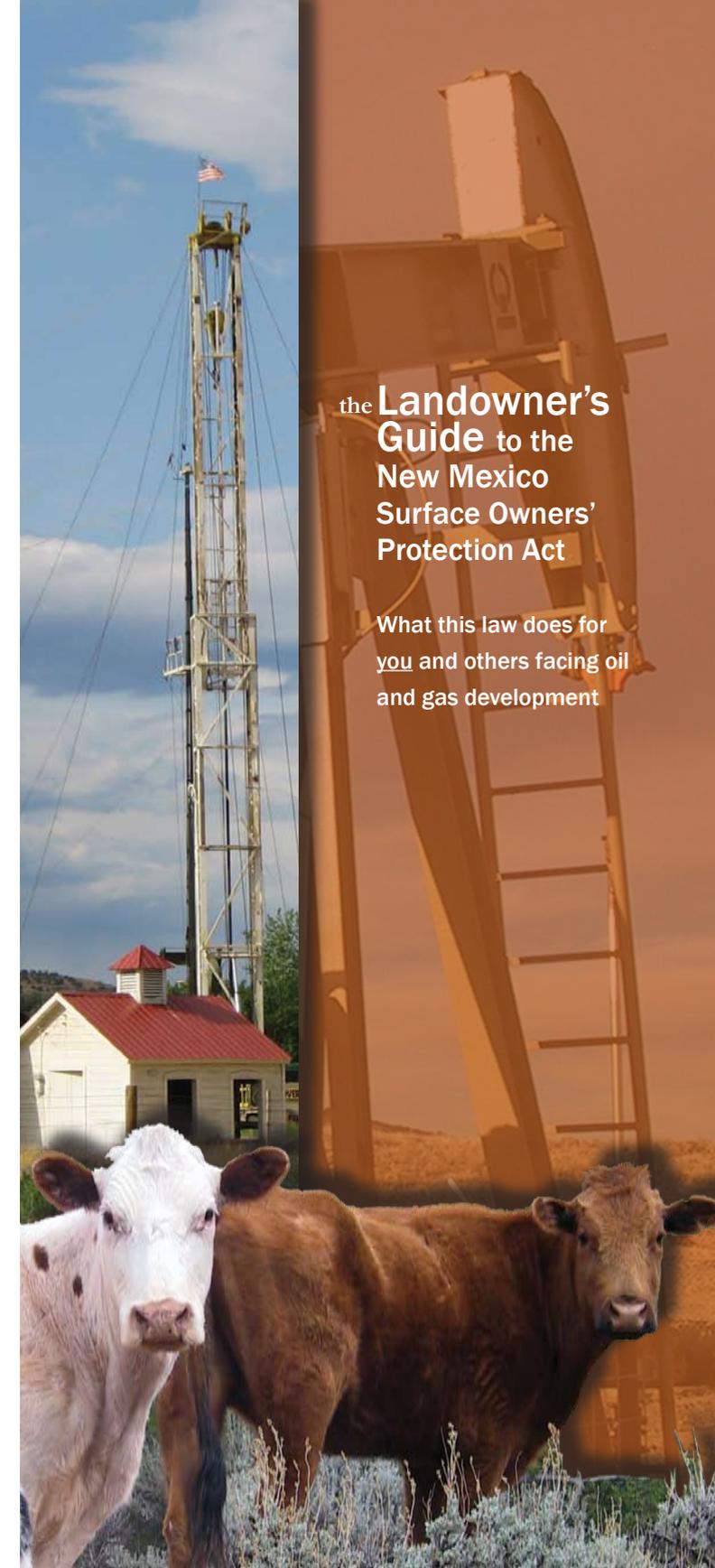
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the Landowner's Guide to the New Mexico Surface Owners' Protection Act

What this law does for you and others facing oil and gas development



Surface Owners' Protection Act

The Surface Owners' Protection Act (SOPA) is a law passed by the New Mexico legislature, and signed by Governor Richardson in 2007, that changes the law in New Mexico to give certain rights to surface owners that they did not previously have.

Why do we need SOPA?

Before this law was passed, oil and gas companies in New Mexico were not required to notify landowners before drilling, they were not required to have a written agreement with a surface owner nor were they required to pay for the use of the land surface.

In 2005 several organizations came together to advocate for landowners facing oil and gas drilling and to pass SOPA. The Oil & Gas Accountability Project, New Mexico Cattle Growers' Association, New Mexico Environmental Law Center and San Juan Citizens Alliance worked with Representative Andy Nuñez (D-Hatch) and Senator Cisco McSorley (D-Bernalillo) to draft and promote the passage of this important law. **CONTACT INFORMATION IS ON THE BACK.**

THE DETAILS

What does SOPA do for me?

An oil or gas operator can no longer just show up with a drilling rig. They must give the surface owner five days written notice prior to surveying and staking and 30 days written notice for oil and gas operations.

With the notice, the operator must describe what and where and how they intend to carry out oil and gas operations on the surface owner's property. They must give enough detail of the planned operations so that the surface owner can determine how the operations may impact the surface owner's use of the land.

The operator must also provide a proposed surface use and compensation agreement to the surface owner with the notice. This proposed agreement must address placement of all well pads, roads, pipelines, pits, and other equipment. The agreement must also discuss how water will be used, erosion controlled, noise, traffic, dust, trespass, etc. — in short, how all the impacts of the oil or gas operation will be managed. Finally, the proposed agreement must suggest how the operator will close any pits on the site as well as reclaim the surface when the initial operations are completed and then when the well is abandoned.

For more information and sample surface use agreements, visit: *Oil & Gas at Your Door? A Landowner's Guide to Oil and Gas Development*: www.earthworksaction.org/LOGuidechapters.cfm

Once a surface owner receives the notice and proposed surface use and compensation agreement, the landowner has at least 20 days to consider the agreement and decide whether to accept it or to propose changes to the agreement.

Will the company compensate me for damages?

As part of the proposed agreement, the operator must make an offer of compensation for damages to the surface.

The SOPA lists several types of damages from oil and gas operations that an operator is responsible for:

- loss of agricultural production and income
- lost land value
- lost use of and access to the land
- lost value of improvements

Because the new SOPA law includes the broadest range of damages of any landowner law in the country, it will be up to the individual landowner to negotiate reasonable compensation amounts.

Often there is no equality in the amount of compensation received from one landowner to the next, or from one region to the next. Also, it is not always easy to find out how much you should be asking for. Often, there are clauses in surface use agreements that prohibit surface owners from disclosing the details of their surface use agreement. This makes it extremely difficult for landowners who are negotiating an agreement to know what is reasonable, or to try to negotiate agreements similar to what their neighbors have negotiated. Still, that should not prevent surface owners from talking with other landowners or attorneys, and trying to find out what level of compensation others have been able to receive.

—*Oil and Gas at Your Door?*

For reported compensation amounts in various states, see *Oil and Gas at Your Door?* pages 111-9 to 111-11. www.earthworksaction.org/LOGuidechapters.cfm



How do I negotiate with an oil and gas company?

The companies often use a "landman" to negotiate with surface owners. A landman is employed by the oil or gas operator to research mineral ownership, contact surface owners and often to negotiate surface use agreements with those surface owners. Many times, notice of operations and proposed surface use agreements are sent by the landman to the surface owner.

What do I do if I can't agree with the oil and gas company?

The SOPA allows a surface owner 20 days to accept, reject or enter into negotiations with an operator. However, the act also states that 30 days after notice is given to the surface owner, if a bond is deposited, the operator may enter upon the property that is leased to commence oil and gas operations. As a practical matter, negotiations over a surface use and compensation agreement will continue for some days beyond the 30-day period. If there is no agreement reached prior to a bond-on, the surface owner has the option of taking the issue to state district court. The bond does not relieve the operator from the duties outlined in the SOPA.

What does bonding-on mean?

Under the SOPA, after the 30-day notice period, an operator may commence oil and gas operations if they have deposited a bond, letter of credit, cash or certificate of deposit with a bank or financial institution in New Mexico that covers the estimated damages to the surface. This bond must be for the benefit of the surface owner.

What does it mean that a company has a "duty to reclaim?"

SOPA states that operators "shall reclaim all the surface affected" by their operations. According to the SOPA, "reclaim" means to substantially restore the surface to the condition that existed prior to operations, or as otherwise agreed to in writing by the surface owner. Essentially, this requires operators to leave the surface as they found it — no more, no less.

Should I seek legal advice?

SOPA was not designed to affect surface owners' existing rights under New Mexico law. Surface owners receiving a notice from an oil and gas operator should consider consulting an attorney to get specific legal advice regarding their rights.

