

Utah's Surface Owner Protection Act of 2012

Utah's Surface Owner Protection Act (SOPA) demonstrates the need to balance the surface owner's rights with the rights of oil and gas operators when they seek to drill on private property. Prior to the passage of Senate Bill (SB) 77 in the 2012 General Session of the Utah Legislature, there was little statutory recognition of land owner rights when surface rights and mineral rights are severed. Senator Kevin Van Tassell (R-Vernal) was chief sponsor of the bill with Representative John Mathis (R-Vernal) the House sponsor. Both the Utah Senate and House of Representatives passed SB 77 unanimously. Governor Gary Herbert signed the bill into law.

Key components of the law include that:

- A "surface use agreement" negotiated by a surface land owner and oil and gas operator addresses the use and reclamation of surface land, as well as compensation to be paid to the surface owner for damage caused by oil and gas operations that results in loss of crops, loss of value of existing improvements owned on the surface land, and permanent damage to the surface land.
- The operator's existing legal responsibility to furnish a bond sufficient to plug dry or abandoned wells, repair wells causing waste or pollution, and maintain and restore the well site is increased. SB 77 requires operators to also provide a bond adequate to protect the surface owner against unreasonable loss of crops, loss of value of existing improvements owned on the surface land, and permanent damage to the surface land.
- The operator has the right to use the surface land for oil and gas operations to the extent reasonably necessary to conduct operations, but must do so in such a way as to allow the surface land owner the greatest possible use of his or her property.
- Except as is reasonably necessary to conduct oil and gas operations, the operator must mitigate the effects of accessing the surface owner's land, minimize interference with his or her use of the property, and must compensate the surface owner for unreasonable loss of crops, loss of value to existing improvements, and permanent damage to the surface land.
- A surface owner and an operator may request non-binding mediation if they cannot agree on the amount of damages.

- The 2012 law applies to owners whose surface overlies mineral rights owned by private individuals or entities, commonly referred to as "split estates." If mineral rights are owned by the federal government or Indian Tribes, Bureau of Land Management (BLM) rules apply instead. If mineral rights are owned by the State of Utah, School and Institutional Trust Land Administration, SITLA rules apply.

WHERE TO START WHEN AN OIL AND GAS COMPANY CONTACTS YOU ABOUT DRILLING ON YOUR LAND.

When a surface owner first learns that an oil and gas company wants to drill on their land, many are stunned and perplexed. Many questions come to mind. Can they do this? Isn't this trespassing? What if I'm already using the land for something else? Can I sue them and keep them off? Will I make a lot of money if they find oil or gas? Will I be compensated at all and if so, how can I make sure it's adequate? How long will they be here? What will having an oil well on my land do to my property value? Do I have any say in where the operations are located? How much space will it take up? Are there possible threats to the health and well-being of my family, livestock, or land? If they want to "frack," might that contaminate my drinking and surface water? Do I have any legal rights and if so, what are they and how do I make sure I get whatever protection they offer?

The answers to many of these questions and others you might have are relatively easy to find. Others take some digging, depending on various circumstances, including even which company you're dealing with. SB 77 was drafted to bring more balance to the negotiation process between a surface owner and an oil and gas company. The company knows "everything" about the situation and most surface owners know very little when they first learn of a company's intent. SB 77 summarized in the panel to the left provides landowners with greater protection. But there's a lot more to responding effectively to drilling on your land.

The purpose of this brochure is to provide some answers and help identify resources so that surface owners are better able to know and exercise their rights.

FREQUENTLY ASKED QUESTIONS

Can they do this?

It's not uncommon for a surface owner to respond by saying, "You can't do that—that's trespassing," "You can't disrupt my use of my land," etc. Some think that the company can't drill unless they sign an agreement allowing them to. However, the above beliefs are not true. If a company holds the mineral rights under your land, they have the right to "enjoy" those rights (explore, develop, extract, and profit from the production) even if by doing so, they prevent you, as the surface owner, from "enjoying" your right to the surface. That's because the "mineral estate" is dominant over the "surface estate."

What does "Split Estate" mean?

Split estate means that the owner of the surface land (or estate) does not also own the minerals (or mineral estate) underneath that surface. In general, if an original land patent (first title conveyed to an owner) was granted after the Stock Raising Act of 1916, the estates were split with the mineral estate being retained by the federal government. Since then, certain mineral rights in some areas have been placed under the control of Indian Tribes.

So what can I do?

Advocating for yourself is one of the most important things you can do. Don't join countless other surface owners who have felt that they had no choice but to agree to everything a producer wanted. Yes, the "mineral estate is dominant," but surface owners can and should expect to have some say in how things happen. To claim that right, as well as the protections provided in SB 77 or other legal provisions, you need information. So when you first receive notice that a company wants to drill on your surface, you should:

- **Respond right away, but tell the company representative that you need time to gather your questions and concerns and learn about your rights and options.** They have the legal right to send a surveyor, even without your permission, and if you ask for some time, they may press for the survey right away. But you can point out that you need time to

consider your surface use. That could also save them money in case you later agree on a different location.

- **Find out who owns the mineral rights under your surface.** Utah's Surface Owner Protection Act (and therefore information about the law in this brochure) applies only to surface land where the subsurface mineral rights are privately owned. If the mineral rights are held by the federal government or an Indian Tribe—a situation that is very common in Utah and other western states—a separate set of surface owner protections apply. They are administered by the Bureau of Land Management (BLM) and provide the same protection to private surface owners as to public lands. If you don't know or aren't sure who owns your mineral rights, you can contact The Utah Surface Owner Resource Center (see back panel) for help finding out. They can also help you find out about the BLM rules if your minerals are federal or Indian.
- **Develop a written list of questions, concerns, and potential types of loss and damage you will suffer and their value or costs.** For example, think about 1) your current use of your surface land and what it could or would mean to you if that use were to be disrupted or prohibited by oil and gas operations—think about losses and damages over the long term, since an operating well may be in place for several decades; 2) potential effects on the health and well-being of you, your family, your neighbors, and others in the community of oil and gas operations and associated noise, dust, traffic, road building; 3) questions about what operations will look like, 4) locations of well operations, roads, pipelines, etc., that could work better for you than others. It can be useful to provide this description in writing to the company so they have a clear picture of your situation, needs, and preferences. Provide that information to others you are working with such as your attorney, advisors, or agency personnel.
- **Start learning about the permitting process and your rights and options by contacting the Division of Oil, Gas, and Mining (DOGMI).** Before a company can drill anywhere in Utah, it must get a permit

from DOGM. That's true regardless of who owns the surface or the minerals. By law and DOGM regulations, the Application for Permit to Drill (APD) requires that a company take several steps. SB 77 adds more requirements. Ask DOGM to describe their role in the operators' application to drill (APD) process, surface owner versus operator rights, and how DOGM can assist you in this process. (Brad Hill, Oil & Gas Permitting Manager, 801-538-5315.)

- **Negotiate with the company to get the best, most comprehensive deal you can via the Surface Use Agreement (SUA).** You can expect the company to provide you with a SUA and ask you to sign it. You are not obligated to do that. Like any agreement, it should reflect a sincere effort on the parts of both sides to negotiate. The company's agreement was developed to give them and their stockholders the best possible deal. It's up to you to stand up for yourself. Some surface owners hire an attorney. If you want to do the negotiating yourself, a good course of action can be to utilize resources that are available, including lists of issues you can ask be addressed in the SUA and sample SUAs others have developed to help surface owners understand the kinds of issues they can seek to have addressed in the SUA. You can ask DOGM or the Utah Department of Agriculture and Food to have an impartial mediator assist in the negotiations.
- **Ask the company to pay the full extent of "rollback taxes" due to the change in land use that occurs when their well goes in.** When an oil or gas well goes in, that portion of your land is no longer used for agriculture and therefore subject to the Greenbelt Law. Under the law, you will be assessed for the 5-year decrease in taxes, even if the change in use was imposed on you. Some companies voluntarily pay, but there's nothing that requires that. You may need to ensure that payment of rollback taxes by the company is part of the SUA. Call your County Assessor for more information.
- **Talk with your neighbors.** An oil and gas well and associated operations on your land won't just affect you. Traffic, dust, noise, lights, personnel,

pipeline and road construction, air pollution, the possibility of water contamination and other potential negative impacts on drinking and surface water, etc., will create changes in their lives, plans, and land values almost as much as yours. People with health conditions can be especially vulnerable to air emissions—a reality with all oil and gas operations. Water contamination can occur. Communities need to be aware and can also provide support and suggestions about what to try to address in your negotiations with the company. Some counties have established ordinances related to well siting and distance from homes, for example.

Whom will I negotiate with? You or your attorney will probably deal with an individual called a "Landman," a private contractor or company employee who performs various services for oil and gas companies. These services include determining ownership of minerals through the research of public and private records, negotiating acquisition of mineral rights, negotiating surface use agreements, etc. If working with the Landman proves difficult, you can request to directly contact the oil and gas company.

If I refuse to negotiate/sign a Surface Use Agreement, will that prevent drilling? No. DOGM cannot refuse to issue a permit just because there is no SUA. However, the Division seeks to minimize conflict between surface owners and the industry and will encourage negotiation, mediation, and surface owner education and awareness.

Do the new law and/or regulations set any ceiling on the amount for compensation I can receive for my loss or damages? No! The law sets no dollar limits of any kind. The proposed DOGM regulations set \$6,000 as the bond amount the operator has to put up if no Surface Owner Agreement can be reached, but that in no way limits the compensation for loss or damage a surface owner can negotiate for in the process of developing a SUA.



For more information:

- Utah Farm Bureau
www.utfb.fb.org
- Utah Division of Oil, Gas & Mining
www.oilgas.ogm.utah.gov/index.htm
- Utah Royalty Owners Association
435-725-3232, P.O.B. 1292, Roosevelt, UT 84066
- Frac Focus - fracfocus.org
- Oil & Gas Accountability Project -
www.earthworksaction.org/reform_governments/oil_gas_accountability_project
- Western Organization of Resource Councils
www.worc.org/
- Surface Owner Organizations (Western States)
 - Dakota Resource Council (ND) - drcinfo.org/
 - Dakota Rural Action (SD) - www.dakotarural.org
 - Idaho Rural Council - www.idahoruralcouncil.org
 - Northern Plains Resource Council (MT) -
www.northernplains.org
 - Oregon Rural Action - www.oregonrural.org
 - Powder River Basin Resource Council (WY) -
www.powderriverbasin.org
 - Utah Surface Owner Resource Center -
www.utahsurfaceowners.org
 - Western Colorado Congress - www.wccongress.org


UTAH FARM BUREAU

GUIDE TO UTAH'S SURFACE OWNER PROTECTION ACT



Basic information for surface owners when an oil and gas company announces intentions to drill on your land.

October 2012