

110TH CONGRESS
1ST SESSION

S. 1931

To amend the Mineral Leasing Act to ensure that development of certain Federal oil and gas resources will occur in a manner that protects water resources and respects the rights of surface owners, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2007

Mr. TESTER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Mineral Leasing Act to ensure that development of certain Federal oil and gas resources will occur in a manner that protects water resources and respects the rights of surface owners, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Surface Owner Protection Act”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROTECTION OF WATER RESOURCES

Sec. 101. Mineral Leasing Act requirements.

Sec. 102. Relationship to State law.

TITLE II—SURFACE OWNER PROTECTION

Sec. 201. Definitions.

Sec. 202. Post-lease surface use agreement.

Sec. 203. Authorized exploration and drilling operations.

Sec. 204. Surface owner notification.

TITLE III—RECLAMATION AND BONDING

Sec. 301. Reclamation requirements and bond.

TITLE I—PROTECTION OF WATER RESOURCES

SEC. 101. MINERAL LEASING ACT REQUIREMENTS.

Section 17 of the Mineral Leasing Act (30 U.S.C. 226) is amended by adding at the end the following:

“(q) WATER REQUIREMENTS.—

“(1) IN GENERAL.—An operator producing oil or gas (including coalbed methane) under a lease issued under this Act shall—

“(A) replace the water supply of a water user who obtains all or part of the supply of the user of water for domestic, agricultural, or other purposes from an underground or surface source that has been affected by contamination, diminution, or interruption proximately resulting from drilling operations for the production; and

1 “(B) comply with all applicable require-
2 ments of Federal and State law for discharge of
3 any water produced under the lease.

4 “(2) WATER MANAGEMENT PLAN.—An applica-
5 tion for a lease under this subsection shall be accom-
6 panied by a proposed water management plan in-
7 cluding provisions—

8 “(A) to protect the quantity and quality of
9 surface and ground water systems, both on-site
10 and off-site, from adverse effects of the explo-
11 ration, development, and reclamation processes
12 or to provide alternative sources of water if the
13 protection cannot be ensured;

14 “(B) to protect the rights of present users
15 of water that would be affected by operations
16 under the lease, including the discharge of any
17 water produced in connection with the oper-
18 ations that is not reinjected; and

19 “(C) to identify any agreements with other
20 parties for the beneficial use of produced waters
21 and the steps that will be taken to comply with
22 Federal and State laws relating to the use.”.

23 **SEC. 102. RELATIONSHIP TO STATE LAW.**

24 Nothing in this Act or an amendment made by this
25 Act—

1 (1) impairs or affects any right or jurisdiction
2 of any State with respect to the waters of the State;
3 or

4 (2) limits, alters, modifies, or amends any of
5 the interstate compacts or equitable apportionment
6 decrees that apportion water among and between
7 States.

8 **TITLE II—SURFACE OWNER**
9 **PROTECTION**

10 **SEC. 201. DEFINITIONS.**

11 In this title:

12 (1) **LEASE.**—The term “lease” means a lease
13 issued by the Secretary under the Mineral Leasing
14 Act (30 U.S.C. 181 et seq.) or any other law, pro-
15 viding for development of oil and gas resources (in-
16 cluding coalbed methane) owned by the United
17 States.

18 (2) **LESSEE.**—The term “lessee” means the
19 holder of a lease.

20 (3) **OPERATOR.**—The term “operator” means
21 any person that is responsible under the terms and
22 conditions of a lease for the operations conducted on
23 leased land or any portion of the land.

24 (4) **SECRETARY.**—The term “Secretary” means
25 the Secretary of the Interior.

1 **SEC. 202. POST-LEASE SURFACE USE AGREEMENT.**

2 (a) IN GENERAL.—Except as provided in section 203,
3 the Secretary may not authorize any operator to conduct
4 exploration and drilling operations on land with respect
5 to which title to oil and gas resources is held by the United
6 States but title to the surface estate is not held by the
7 United States, until the operator has filed with the Sec-
8 retary a document, signed by the operator and the 1 or
9 more surface owners, indicating that the operator has se-
10 cured a written surface use agreement between the oper-
11 ator and the 1 or more surface owners that meets the re-
12 quirements of subsection (b).

13 (b) CONTENTS.—A surface use agreement shall pro-
14 vide for—

15 (1) the use of only the portion of the surface
16 estate that is reasonably necessary for exploration
17 and drilling operations based on site-specific condi-
18 tions, as determined by the Secretary;

19 (2) the accommodation of the surface estate
20 owner, to the maximum extent practicable, including
21 the location, use, timing, and type of exploration and
22 drilling operations, consistent with the right of the
23 operator to develop the oil and gas estate;

24 (3) the reclamation of the site to a condition ca-
25 pable of supporting the uses which the land was ca-

1 pable of supporting prior to exploration and drilling
 2 operations; and

3 (4) compensation for damages as a result of ex-
 4 ploration and drilling operations, including—

5 (A) loss of income and increased costs in-
 6 curred;

7 (B) damage to or destruction of personal
 8 property, including crops, forage, and livestock;
 9 and

10 (C) failure to reclaim the site in accord-
 11 ance with paragraph (3).

12 (c) PROCEDURE.—

13 (1) NOTICE.—An operator shall notify each
 14 surface estate owner of the desire of the operator to
 15 conclude an agreement under this section.

16 (2) ARBITRATION.—

17 (A) IN GENERAL.—If the surface estate
 18 owner and the operator do not reach an agree-
 19 ment within 90 days after the date on which
 20 the operator provided the notice, the matter
 21 shall be referred to third party arbitration for
 22 resolution within a period of 90 days.

23 (B) COST.—The cost of the arbitration
 24 shall be the responsibility of the operator.

25 (C) ARBITRATORS.—The Secretary shall—

- 1 (i) identify persons with experience in
 2 conducting arbitrations; and
 3 (ii) make the information available to
 4 operators.

5 (D) REFERRALS.—Referral of a matter for
 6 arbitration by a person identified by the Sec-
 7 retary pursuant to subparagraph (C) shall con-
 8 stitute compliance with paragraph (1).

9 (d) ATTORNEYS FEES.—If action is taken to enforce
 10 or interpret any of the terms and conditions contained in
 11 a surface use agreement, the prevailing party shall be re-
 12 imbursed by the other party for reasonable attorneys fees
 13 and actual costs incurred, in addition to any other relief
 14 that a court or arbitration panel may grant.

15 **SEC. 203. AUTHORIZED EXPLORATION AND DRILLING OP-**
 16 **ERATIONS.**

17 (a) IN GENERAL.—The Secretary may authorize an
 18 operator to conduct exploration and drilling operations on
 19 land covered by section 202 in the absence of an agree-
 20 ment with each surface estate owner, if—

21 (1) the Secretary makes a determination, in
 22 writing, that the operator made a good faith attempt
 23 to conclude such an agreement, including referral of
 24 the matter to arbitration pursuant to section

1 202(c)(2), but that no agreement was concluded
2 within 90 days after the referral to arbitration;

3 (2) the operator submits a plan of operations
4 that covers the matters specified in section 202(b)
5 and for compliance with all other applicable require-
6 ments of Federal and State law; and

7 (3) the operator posts a bond or other financial
8 assurance in an amount the Secretary determines to
9 be adequate to ensure compensation to the surface
10 estate owner for any damage to the site, in the form
11 of a surety bond, trust fund, letter of credit, govern-
12 ment security, certificate of deposit, cash, or equiva-
13 lent.

14 (b) SURFACE OWNER PARTICIPATION.—The Sec-
15 retary shall provide surface estate owners with an oppor-
16 tunity—

17 (1) to comment on plans of operations in ad-
18 vance of a determination of compliance with this
19 title;

20 (2) to participate in bond level determinations
21 and bond release proceedings under this section;

22 (3) to attend an on-site inspection during the
23 determinations and proceedings;

24 (4) to file written objections to a proposed bond
25 release; and

1 (5) to request and participate in an on-site in-
2 spection if the owners have reason to believe there
3 is a violation of the terms and conditions of a plan
4 of operations.

5 (c) PAYMENT OF FINANCIAL GUARANTEE.—

6 (1) IN GENERAL.—A surface estate owner, with
7 respect to any land subject to a lease, may petition
8 the Secretary for payment of all or part of a bond
9 or other financial assurance required under this sec-
10 tion as compensation for any damage as a result of
11 exploration and drilling operations.

12 (2) COMPENSATION.—Pursuant to the petition,
13 the Secretary may use the bond or other guarantee
14 to provide compensation to the surface estate owner
15 for the damage.

16 (d) BOND RELEASE.—On request and after inspec-
17 tion and opportunity for surface estate owner review, the
18 Secretary may release the financial assurance required
19 under this section if the Secretary determines that—

20 (1) exploration and drilling operations have
21 ended; and

22 (2) all damage has been fully compensated.

23 **SEC. 204. SURFACE OWNER NOTIFICATION.**

24 The Secretary shall—

1 (1) notify surface estate owners of lease sales in
2 writing at least 45 days in advance;

3 (2) not later than 10 working days after the
4 date on which a lease is issued, notify surface estate
5 owners regarding the identity of the lessee;

6 (3) notify surface estate owners in writing con-
7 cerning any subsequent decisions regarding a lease,
8 such as modifying or waiving stipulations and ap-
9 proving rights of way; and

10 (4) notify surface estate owners not later than
11 5 business days after the date of issuance of a drill-
12 ing permit under a lease.

13 **TITLE III—RECLAMATION AND** 14 **BONDING**

15 **SEC. 301. RECLAMATION REQUIREMENTS AND BOND.**

16 (a) IN GENERAL.—Section 17 of the Mineral Leasing
17 Act (30 U.S.C. 226) (as amended by section 101) is
18 amended by adding at the end the following:

19 “(r) RECLAMATION REQUIREMENTS AND BOND.—

20 “(1) REQUIREMENTS.—An operator producing
21 oil or gas (including coalbed methane) under a lease
22 issued pursuant to this Act shall—

23 “(A) at a minimum, restore the land af-
24 fected to a condition capable of supporting the
25 uses that the land was capable of supporting

1 prior to any drilling, or higher or better uses if
2 there is reasonable likelihood that—

3 “(i) the 1 or more uses do not—

4 “(I) present any actual or prob-
5 able hazard to public health or safety;
6 or

7 “(II) pose any actual or probable
8 threat of water diminution or pollu-
9 tion; and

10 “(ii) the declared proposed land use of
11 the permit applicant following reclama-
12 tion—

13 “(I) is not impractical or unrea-
14 sonable, inconsistent with applicable
15 land use policies and plans, or involve
16 unreasonable delay in implementation;
17 and

18 “(II) does not violate Federal,
19 State, or local law;

20 “(B) ensure that all reclamation efforts
21 proceed in an environmentally sound manner
22 and as contemporaneously as practicable with
23 the oil and gas drilling operations; and

24 “(C) submit, with the plan of operations, a
25 reclamation plan that describes in detail the

1 methods and practices that will be used to en-
2 sure complete and timely restoration of all land
3 affected by oil and gas operations.

4 “(2) RECLAMATION BOND.—

5 “(A) IN GENERAL.—An operator pro-
6 ducing oil or gas (including coalbed methane)
7 under a lease issued under this Act shall post
8 a bond that covers the area of land within the
9 permit area on which the operator will initiate
10 and conduct oil and gas drilling and reclama-
11 tion operations within the initial term of the
12 permit.

13 “(B) ADDITIONAL BONDS.—As succeeding
14 increments of oil and gas drilling and reclama-
15 tion operations are initiated and conducted
16 within the permit area, the lessee shall file with
17 the regulatory authority 1 or more additional
18 bonds to cover the increments in accordance
19 with this section.

20 “(C) AMOUNT.—The amount of the bond
21 required for each bonded area shall—

22 “(i) meet the reclamation require-
23 ments of the approved permit;

24 “(ii) reflect the probable difficulty of
25 reclamation considering factors such as to-

pography, the geology of the site, hydrology, and revegetation potential;

“(iii) be determined by the Secretary; and

“(iv) be sufficient to ensure the completion of the reclamation plan if the work had to be performed by the Secretary in the event of forfeiture.

“(3) REGULATIONS.—No later than 1 year after the date of enactment of this subsection, the Secretary shall promulgate regulations to implement the requirements of this subsection.”.

(b) REVIEW AND REPORT.—

(1) REVIEW.—The Comptroller General of the United States shall conduct a review of the adequacy of the regulations promulgated by the Secretary of the Interior pursuant to subsection (r)(3) of section 17 of the Mineral Leasing Act (30 U.S.C. 226) (as added by subsection (a)) to ensure that operators will meet the requirements of subsection (r) of that section.

(2) REPORT.—Not later than 180 days after the date on which the Secretary promulgates regulations pursuant to subsection (r)(3) of section 17 of the Mineral Leasing Act (30 U.S.C. 226) (as added

1 by subsection (a)), the Comptroller General of the
2 United States shall submit to the Committee on
3 Natural Resources of the House of Representatives
4 and the Committee on Energy and Natural Re-
5 sources of the Senate a report that describes the re-
6 sults of the review conducted under paragraph (1),
7 including—

8 (A) any findings and conclusions of the
9 Comptroller General of the United States; and

10 (B) any recommendations the Comptroller
11 General may make with respect to any legisla-
12 tion or administrative actions the Comptroller
13 General of the United States determines would
14 be appropriate to ensure compliance with the
15 requirements of subsection (r) of that section.

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