

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.

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## 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

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# 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.

1                   **TITLE I—PROTECTION OF**  
2                   **WATER RESOURCES**

3   **SEC. 101. MINERAL LEASING ACT REQUIREMENTS.**

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

6       “(q) WATER REQUIREMENTS.—

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

10               “(A) replace the water supply of a water  
11       user who obtains all or part of the supply of the  
12       user of water for domestic, agricultural, or  
13       other purposes from an underground or surface  
14       source that has been affected by contamination,  
15       diminution, or interruption proximately result-  
16       ing from drilling operations for the production;  
17       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—

## **TITLE II—SURFACE OWNER PROTECTION**

## 10 SEC. 201. DEFINITIONS.

## 11 In this title:

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—

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 imburshed 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—

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

5 (c) PAYMENT OF FINANCIAL GUARANTEE.—

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—

## **TITLE III—RECLAMATION AND 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 unre-  
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-

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

13 (b) REVIEW AND REPORT.—

14 (1) REVIEW.—The Comptroller General of the  
15 United States shall conduct a review of the adequacy  
16 of the regulations promulgated by the Secretary of  
17 the Interior pursuant to subsection (r)(3) of section  
18 17 of the Mineral Leasing Act (30 U.S.C. 226) (as  
19 added by subsection (a)) to ensure that operators  
20 will meet the requirements of subsection (r) of that  
21 section.

22 (2) REPORT.—Not later than 180 days after  
23 the date on which the Secretary promulgates regula-  
24 tions pursuant to subsection (r)(3) of section 17 of  
25 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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