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FISCAL IMPACT REPORT

SPONSOR Griego ORIGINAL DATE 2/15/2007 HB _____
LAST UPDATED _____
SHORT TITLE Surface Owners Protection Act SB 991
ANALYST Schuss

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Energy, Mineral and Natural Resources Department (EMNRD)

Department of Agriculture (DOA)

SUMMARY

Synopsis of Bill

Senate Bill 991 would enact the Surface Owners Protection Act that pursuant to Section 2 applies to private fee surface land. Section 4 requires oil and gas operators to compensate surface owners for any damages sustained as a direct result of oil and gas operations on their land, but operators are not responsible for allocating compensation between the surface owner and any tenant. An operator must also reclaim (here defined as making reasonable efforts to restore the surface directly affected by oil and gas operations to the condition that existed prior to oil and gas operations or as otherwise agreed to in writing by the surface owner and the operator) the surface directly affected.

Section 5 requires an operator to provide 5 business days' notice to the surface owner prior to initial entry upon the land for activities that do not disturb the surface, and 30 days' notice prior to entering to conduct oil and gas operations. It also describes the methods of providing notice, and the contents of a notice regarding the intent to conduct operations, including sufficient disclosure of the planned operations to enable the surface owner to evaluate the impact of those operations on the property, contact information of the operator and the operator's authorized representative, and a proposed surface use and compensation agreement. At a minimum, that agreement must describe: placement, specifications, maintenance and design of well pads,

gathering lines and roads to be constructed; construction, maintenance and placement of all pits and equipment used or planned; terms of entry and exit; use and impoundment of water and surface water drainage changes; removal and restoration of plant life; erosion control and actions to limit and effectively control precipitation runoff and erosion; control and management of weeds, dust, traffic, trespass, litter and interference with surface owner's use; interim and final reclamation; and an offer of compensation for damage to surface resulting from oil and gas operations. Upon receipt of notice, the surface owner has 20 days to accept the proposed agreement.

Section 6 allows the operator, 30 days after the required notice to the surface owner and if no agreement has been entered into, to enter the property and conduct operations after depositing a bond or other surety with the Energy, Minerals and National Resources Department for the benefit of the surface owner in an amount equal to the greater of the compensation as estimated by the operator for damages or \$2,500 per well site.

Section 7 may provide a cause of action and provides for award of attorney fees and costs in any action brought pursuant to the act if the operator failed to provide the required notice; operations were conducted without an agreement and the required surety was not posted; the operator failed to exercise good faith in estimating the compensation owed when posting its surety; or the operation went beyond the scope of the agreement and the operator at the time of entering into the agreement had reason to believe that the scope was too narrow.

Section 8 states that no notice, surface use and compensation agreement or bond shall be required for operations to protect health, safety or the environment in emergency situations.

Section 9 makes the Act applicable to oil and gas operations commenced on or after July 1, 2007 (effective date) except for maintenance and ongoing production activities relating to a well that is producing or capable of producing on June 30, 2007 for which the operator has a valid permit from the Oil Conservation Division, but operations requiring a drilling rig or additional waste pits that disturb additional surface are subject to the Act. An additional exception is provided for operations conducted pursuant to an agreement entered into prior to the effective date between the surface owner and the operator that sets forth each party's rights and obligations with respect to surface activities.

FISCAL IMPLICATIONS

EMNRD estimates that it would need one additional full-time employee to administer the provisions requiring filing of bonds for the benefit of the surface owner with the Oil Conservation Division (OCD).

SIGNIFICANT ISSUES

EMNRD has included the following in their analysis:

Under common law (accustomed practice typically applied by courts in the absence of a statute), an owner or lessee of oil and gas has a right to use as much of the surface of the land as is necessary to explore for and produce minerals. The surface owner, absent a contrary agreement, is not entitled to compensation for loss of use of the portion of the surface necessary for mineral operations, nor for any diminution in the value of the surface due to such operations. The oil and gas producer is liable only for damages to the surface caused by its negligence, or by

unreasonable or excessive use of the surface.

State law does not presently require prior notice of operations to the surface owner, or require security from the operator for damages that may accrue to the surface owner. Where, however, the mineral estate is owned by the United States, the United States Bureau of Land Management requires that oil and gas producers give notice to the surface owner and either obtain a surface use agreement or post security prior to commencement of operations. BLM requires that an oil and gas operator file a statement that it has an agreement with the surface owner, or a bond, with BLM at the time the operator files its application for permit to drill. The bond amount is determined by BLM on a case by case basis and is usually from \$1,000 to \$5,000 per well location. Oil and gas producers in New Mexico typically pay surface damage settlements to surface owners prior to operations. There is, however, no legal requirement to do so.

SB 991 would put New Mexico in company with nine other states (Illinois, Kentucky, Montana, North Dakota, Oklahoma, South Dakota, Tennessee, West Virginia and Wyoming) that have modified the common law concerning an oil and gas operator's liability to surface owners by statute. SB 991 follows the general pattern of other states by providing surface owners a right to compensation while allowing oil and gas operators access on prescribed conditions. Under the bill, the oil and gas operator could obtain immediate access by posting a bond or other security in the amount provided, if the surface owner does not respond to the operator's proposal, or if negotiations are not successful.

SB 991 would apply to lands where the United States owns the minerals as well as to lands in State or private mineral ownership. Accordingly, an oil and gas operator drilling on federal mineral lands would, if it failed to secure a surface use agreement, have to comply with the bonding requirements of the Act as well as the existing BLM requirements described above.

ADMINISTRATIVE IMPLICATIONS

OCD states that they would be charged with the responsibility of administering the bonding provisions of the act. OCD would need additional staff to maintain and track these bonds, and if additional resources were not available, this duty would require diversion of staff from OCD's existing functions, including, specifically, accounting for bonds payable to the State. Since the bonds this bill requires are for the benefit of private persons (surface owners) these bonds should either be made payable to and held by the surface owner beneficiaries, or deposited with a trustee as provided in SB 960 and HB 827.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with/Relates to SB 960 and HB 827

AGO notes the following issues, these issues arise from the differences SB 991 has with SB 960 and HB 827:

1. This bill applies only to private fee surface land. (Section 2)
2. The required notice of entry under this bill does not need to include a copy of this act. (See Section 5B)

3. This bill requires compensation only for damages (and not for use of the surface owner's property). (Section 4)
4. This bill does not require the operator to compensate a tenant for leasehold improvements it has damaged.
5. The obligation to reclaim in this bill is limited to "reasonable efforts" to restore the surface directly affected (instead of substantially restoring the affected surface).
6. A surface use and compensation agreement under this bill is not required to include a) actions to minimize surface damage to the property; b) operator indemnification of the surface owner for personal injuries caused by the operator; or c) compensation for use of the surface. (See Section 5)
7. The amount of the surety to be posted by the operator under this bill is determined by the operator by estimating what it may owe in damages, or \$2,500 per well, and there are no provisions governing when the surety is to be released. (See Section 6)
8. This bill does not authorize additional damages upon a finding of willing and knowing violations of certain provisions of the Act or the parties' agreement. (See Section 7)
9. Section 7 of this bill may create an exclusive cause of action as to liability between a surface owner and an operator.
10. There appears to be no duty to reclaim as to wells existing as of the effective date of the act.

BS/csd