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SENATE BILL 59

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO PROPERTY; PROVIDING FOR OWNERSHIP AND CONVEYANCE OF
PORE SPACE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. OWNERSHIP AND CONVEYANCE OF PORE SPACE.--

A. The pore space is an element of the surface estate. If ownership of the pore space cannot be determined from the deeds or severance instruments relating to the property by a review of applicable statutory and common law, it is presumed that the owner of the surface estate owns the pore space.

B. Title to pore space may be severed from the surface estate by an instrument severing pore space ownership or conveying title to severed pore space that shall describe the pore space by subsurface geologic survey, a metes and

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1 bounds description or other means that sufficiently identify
2 the horizontal and vertical boundaries of the pore space
3 conveyed. If the instrument does not define the vertical
4 boundaries, the transfer shall be deemed to include pore space
5 at all depths beneath the surface areas described.

6 C. The ownership of a severed right or title to
7 pore space shall not confer any right to enter upon or
8 otherwise use the surface of the land unless the instrument of
9 severance expressly so provides.

10 D. No severance of the pore space shall diminish or
11 interfere with the rights of a severed mineral estate.

12 E. No grant of easement or access by the owner or
13 lessee of the severed pore space shall be required for:

14 (1) an exercise of the rights acquired
15 pursuant to the mineral lease or deed; or

16 (2) the installation, use, repair or removal
17 of buried pipelines, flowlines, gathering lines, power lines or
18 similar utility lines.

19 F. No provision of statute, rule or ordinance
20 requiring notice to be given to an owner of land, to a surface
21 owner or to an owner of the mineral estate shall be construed
22 to require notice to a person holding ownership interest only
23 in underlying pore space.

24 G. The provisions of this section shall not be
25 construed to affect:

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1 (1) the law with respect to underground
2 waters;

3 (2) the dominance of the mineral estate,
4 including use of the pore space that is reasonably necessary
5 for the exercise of the rights belonging to the mineral estate;

6 (3) the right to inject any substance into the
7 pore space as approved by the oil conservation division of the
8 energy, minerals and natural resources department or pursuant
9 to rules adopted pursuant to this section by or governing the
10 oil conservation commission;

11 (4) the right to drill through the pore space
12 or reservoir, subject to applicable law, for the protection of
13 the reservoir or fluids contained therein;

14 (5) all other rights or interests belonging to
15 the mineral estate; or

16 (6) any enhanced oil recovery project or
17 enhanced gas recovery project pursuant to the Oil and Gas Act.

18 H. As used in this section:

19 (1) "pore space" means all subsurface space,
20 whether in caverns, fissures or pores, on the surface of
21 formation rocks or otherwise; and

22 (2) "reservoir" means any depleted oil or gas
23 reservoir, saline aquifer, coal seam or any natural or
24 artificial subsurface stratum, formation, aquifer, cavity or
25 void that may be used for injection and storage of carbon

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1 dioxide, but "reservoir" does not include any aquifer or part
2 of any aquifer that is an underground source of drinking water.

3 SECTION 2. SEVERABILITY.--If any part or application of
4 this act is held invalid, the remainder or its application to
5 other situations, persons or government entities shall not be
6 affected.

7 SECTION 3. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is December 31, 2011.

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