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SENATE BILL 208

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO PROPERTY; PROVIDING FOR OWNERSHIP OF PORE SPACE IN STRATA UNDERLYING SURFACE LAND.

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

Section 1. A new section of Chapter 47 NMSA 1978 is enacted to read:

"~~[NEW MATERIAL]~~ OWNERSHIP OF PORE SPACE UNDERLYING SURFACES.--

A. The ownership of all pore space in all strata below the surface lands and waters of this state is declared to be vested in the several owners of the surface above the strata.

B. A conveyance of the surface ownership of real property shall be a conveyance of the pore space in all strata below the surface of the real property unless the ownership

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1 interest in the pore space was previously severed from the  
2 surface ownership or is explicitly excluded in the conveyance.  
3 The ownership of pore space in strata may be conveyed in the  
4 manner provided by law for the transfer of mineral interests in  
5 real property. An agreement conveying mineral or other  
6 interests underlying the surface shall not act to convey  
7 ownership of any pore space in the stratum unless the agreement  
8 explicitly conveys that ownership interest.

9 C. No provision of law, including a lawfully  
10 adopted rule or regulation requiring notice to be given to a  
11 surface owner, to an owner of the mineral interest or to both,  
12 shall be construed to require notice to persons holding  
13 ownership interest in any pore space in the underlying strata  
14 unless the law specifies that notice to such persons is  
15 required.

16 D. Nothing in this section shall be construed to  
17 change or alter the common law as of July 1, 2009 as it  
18 relates to the rights belonging to, or the dominance of,  
19 the mineral estate.

20 E. All instruments that transfer the rights to pore  
21 space under this section shall describe the scope of any right  
22 to use the surface estate. The owner of any pore space right  
23 shall have no right to use the surface estate beyond that set  
24 out in a properly recorded instrument.

25 F. Transfers of pore space rights made after July

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1 1, 2009 are null and void at the option of the owner of the  
2 surface estate if the transfer instrument does not contain a  
3 specific description of the location of the pore space being  
4 transferred. The description may include a subsurface geologic  
5 or seismic survey or a metes and bounds description of the  
6 surface lying over the transferred pore space. In the event a  
7 description of the surface is used, the transfer shall be  
8 deemed to include pore space at all depths underlying the  
9 described surface area unless specifically excluded. The  
10 validity of pore space rights pursuant to this section shall  
11 not affect the respective liabilities of any party, and such  
12 liabilities shall operate in the same manner as if the pore  
13 space transfer were valid.

14 G. Nothing in this section shall alter, amend,  
15 diminish or invalidate rights to the use of subsurface pore  
16 space that were acquired by contract or lease prior to July 1,  
17 2009.

18 H. This section shall not alter the law of New  
19 Mexico regarding the primacy of the mineral estate, and any  
20 easement created hereunder shall not limit the right of a  
21 mineral owner or a mineral owner's lessee to reasonable use of  
22 the surface for the purpose of mineral exploration and  
23 production unless the owners and lessees of the entire  
24 mineral estate and geologic sequestration right are a party to  
25 the conservation easement or consent to the conservation

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1        easement.

2                    I. All conveyances of interests in real property on  
3 and after July 1, 2009 shall be subject to the provisions of  
4 this section. All conveyances of real property made prior to  
5 July 1, 2009 shall be construed in accordance with the  
6 provisions of this section unless a person claiming an  
7 ownership interest contrary to the provisions of this section  
8 establishes such ownership by a preponderance of the evidence  
9 in an action to establish ownership of such interest.

10                    J. As used in this section, the term "pore space"  
11 means subsurface space that can be used as storage space for  
12 carbon dioxide or other substances."