

By: Simpson

H.B. No. 2849

A BILL TO BE ENTITLED

AN ACT

relating to the rights of an owner of the surface estate in land in connection with mineral exploration and production operations; providing administrative and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 3, Natural Resources Code, is amended by adding Chapter 93 to read as follows:

CHAPTER 93. SURFACE OWNER PROTECTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 93.001. CONSTRUCTION. This chapter shall be construed liberally to protect the rights of surface owners in connection with mineral exploration and production operations.

Sec. 93.002. DEFINITIONS. In this chapter:

(1) "Agricultural use" has the meaning assigned by Section 23.51, Tax Code.

(2) "Commission" means the Railroad Commission of Texas.

(3) "Mineral developer" means a person who acquires a mineral estate or a mineral lease for the purpose of extracting or using minerals from a tract of land for purposes other than agricultural use.

(4) "Mineral estate" means an estate in or ownership of all or part of the minerals underlying a tract of land.

(5) "Mineral exploration and production operations"

1 means the following activities to the extent they require entry on
2 the surface of a tract of land:

3 (A) mineral geophysical and seismographical
4 exploration activities; and

5 (B) mineral drilling, production, and completion
6 operations.

7 (6) "Streamside management zone" has the meaning
8 assigned by Section 23.9801, Tax Code.

9 (7) "Surface estate" means an estate in or ownership
10 of the surface of a tract of land.

11 (8) "Surface owner" means a person who holds record
12 title to the surface of a tract of land.

13 [Sections 93.003-93.050 reserved for expansion]

14 SUBCHAPTER B. NOTICE REQUIREMENTS

15 Sec. 93.051. NOTICE OF SURVEYING OR CONSTRUCTION. (a) A
16 mineral developer shall give each surface owner written notice that
17 the mineral developer plans to begin surveying the property or
18 constructing improvements on the property not later than the 14th
19 day before the date the surveying or construction begins.

20 (b) Notwithstanding Subsection (a), if the mineral
21 developer plans to begin surveying or construction work less than
22 14 days before the date the mineral lease terminates, the notice may
23 be given at any time before the surveying or construction work
24 begins.

25 (c) The notice must be given to each surface owner at the
26 surface owner's address as shown by the records of the county clerk
27 or county tax assessor-collector at the time the notice is given.

1 (d) The notice must:

2 (1) sufficiently describe the mineral exploration and
3 production operations on the land, the schedule for conducting the
4 operations, and the land to be affected by the operations to enable
5 the surface owner to evaluate the effect of the operations on the
6 surface owner's use of the land;

7 (2) include a description of the property to be
8 surveyed or a plat of the planned construction; and

9 (3) include a statement advising the surface owner of
10 the surface owner's rights under this chapter.

11 (e) If a mineral developer fails to give a surface owner
12 notice as provided by this section, the surface owner may seek any
13 appropriate relief in a court and may receive actual damages. The
14 prevailing party is entitled to recover court costs and reasonable
15 attorney's fees.

16 Sec. 93.052. NOTICE OF DAMAGE TO IMPROVEMENT OWNED BY
17 SURFACE OWNER. A mineral developer shall give each surface owner
18 written notice of damage to an improvement owned by the surface
19 owner and located on the land as soon as convenient but not later
20 than 24 hours after the damage occurs.

21 Sec. 93.053. NOTICE OF NONCOMPLYING AND HARMFUL EQUIPMENT.
22 If a well, pipeline, or other equipment installed by a mineral
23 developer ceases to comply with the rules of the commission in such
24 a way as to present a risk of harm to the surface of land or a person
25 occupying the land, the mineral developer shall notify each surface
26 owner of the risk.

27 [Sections 93.054-93.100 reserved for expansion]

SUBCHAPTER C. DAMAGES

Sec. 93.101. APPLICABILITY. (a) A surface owner is entitled to damages as provided by this subchapter regardless of whether:

(1) the surface estate of the land has been severed from the mineral estate; or

(2) the surface owner is the person who executed the instrument that gave the mineral developer the right to conduct mineral exploration and production operations on the land.

(b) This subchapter does not apply to damages caused by an unforeseen or accidental act or by an act of omission.

Sec. 93.102. REMEDIES CUMULATIVE. The remedies provided by this subchapter are in addition to any other remedies provided by law.

Sec. 93.103. WAIVER OF RIGHTS. (a) A surface owner may waive the surface owner's rights under this subchapter.

(b) A waiver under this section must be in writing.

Sec. 93.104. RIGHT TO PAYMENT FOR DAMAGES. (a) A mineral developer shall pay each surface owner an amount equal to the amount of anticipated and foreseeable damages sustained by the surface owner for the following, to the extent the damages are caused by mineral exploration and production operations on the surface owner's land:

(1) loss of income derived from agricultural use of the land;

(2) reduction in value of the land;

(3) reduction in value of improvements to the land;

1 (4) loss of access to the surface of the land; and

2 (5) loss of the use of the surface of the land.

3 (b) Except as provided by Subsection (c), the amount of
4 compensation for damages under Subsection (a) may be determined by
5 any formula agreed to by the mineral developer and the surface
6 owner.

7 (c) The computation of the amount of compensation for
8 damages described by Subsection (a) to which the surface owner is
9 entitled must take into account:

10 (1) the amount of land affected by mineral exploration
11 and production operations; and

12 (2) the length of the period during which the loss or
13 reduction in value occurs.

14 (d) A surface owner may be paid the compensation for the
15 amount of the damages in annual installments or in a lump-sum
16 payment, except that a surface owner whose damages are caused
17 solely by mineral geophysical and seismographical exploration
18 activities shall be paid for the damages in a lump-sum payment.

19 (e) Payments under this section are intended to compensate
20 the surface owner only for anticipated and foreseeable damages.

21 (f) A surface owner may not reserve or assign the right to
22 compensation for damages described by Subsection (a) apart from the
23 surface estate, except that a surface owner may assign the surface
24 owner's right to compensation for damages described by Subsection
25 (a) to a tenant of the surface owner.

26 Sec. 93.105. AGREEMENT TO PAY DAMAGES. (a) At the time
27 notice required by Section 93.051 is given to a surface owner, the

1 mineral developer shall give to the surface owner a written offer to
2 pay compensation for damages as provided by Section 93.104.

3 (b) The surface owner may accept or reject the offer. An
4 acceptance of the offer must be in writing.

5 (c) Except as provided by Section 93.106(c), the mineral
6 developer may not enter the land with heavy equipment until the
7 mineral developer enters into a written agreement for the payment
8 of compensation for damages with each surface owner.

9 Sec. 93.106. SUIT IN DISTRICT COURT. (a) If the mineral
10 developer cannot determine or locate all of the surface owners with
11 reasonable diligence or if a surface owner rejects the mineral
12 developer's offer under Section 93.105, the mineral developer may
13 bring an action in a district court in the county in which the land
14 is located for a judgment specifying the amount of compensation for
15 damages, if any, the mineral developer is required to pay the
16 surface owner or owners with whom no agreement has been made.

17 (b) A mineral developer who gives notice under Section
18 93.051 may not bring an action under this section before the 30th
19 day after the date the notice is given.

20 (c) Notwithstanding Section 93.105(c), a mineral developer
21 who brings an action under this section may enter the land with
22 heavy equipment.

23 (d) The court shall appoint an attorney ad litem to
24 represent a surface owner who cannot be determined or located.

25 (e) The mineral developer and a surface owner who is a party
26 to the suit shall mutually appoint three appraisers. If more than
27 one surface owner is a party to the suit, the surface owners shall

1 agree on which surface owner is entitled to appoint the appraisers.
2 If the mineral developer and the surface owner who is entitled to
3 appoint appraisers are unable to agree on the appraisers to be
4 appointed, the mineral developer and the surface owner shall each
5 appoint one appraiser, and the two appraisers appointed shall
6 select a third appraiser to be appointed by the court. Unless the
7 court grants additional time for good cause shown, the appraisers
8 must be selected by the 20th day after the date the petition
9 initiating the suit is filed. If some or all of the appraisers have
10 not been selected by that date, the court shall appoint the
11 remaining appraisers.

12 (f) The appraisers shall inspect the land and determine an
13 amount to compensate each surface owner who is a party to the suit
14 for the damages the owner has sustained or will sustain because of
15 the mineral exploration and production operations. Not later than
16 the 30th day after the date they are appointed, the appraisers shall
17 file a written report with the court recommending the amount of
18 compensation, if any, the mineral developer shall pay each surface
19 owner who is a party to the suit. Section 93.104 governs the
20 determination of the amount of damages to which each surface owner
21 who is a party to the suit is entitled and whether the compensation
22 shall be paid in installments or a lump sum. Not later than the 10th
23 day after the date the report is filed, the clerk of the court shall
24 mail a copy of the report to the mineral developer and each surface
25 owner who is a party to the suit.

26 (g) After considering the appraisers' report, the court
27 shall determine:

1 (1) the amount of compensation, if any, the mineral
2 developer shall pay each surface owner who is a party to the suit
3 and the manner in which the compensation must be paid; and

4 (2) the compensation to which the appraisers are
5 entitled.

6 (h) The court shall enter an order:

7 (1) directing the mineral developer to pay each
8 surface owner who is a party to the suit the appropriate amount of
9 compensation, if any, determined under Subsection (g)(1) and
10 specifying the manner in which the compensation must be paid;

11 (2) directing the mineral developer and the surface
12 owners who are parties to the suit to each pay to the appraisers a
13 share of the amount determined under Subsection (g)(2) so that
14 one-half of the amount is paid by the surface owners in proportion
15 to their undivided interests in the surface of the land and one-half
16 of the amount is paid by the mineral developer; and

17 (3) directing the mineral developer and the surface
18 owners who are parties to the suit to each pay a share of the court's
19 costs so that one-half of the costs are paid by the surface owners
20 in proportion to their undivided interests in the surface of the
21 land and one-half of the costs are paid by the mineral developer.

22 (i) If a surface owner cannot be determined or located, the
23 mineral developer shall pay into the registry of the court the
24 compensation to which the surface owner is entitled under
25 Subsection (h)(1).

26 [Sections 93.107-93.150 reserved for expansion]

27 SUBCHAPTER D. RESTRICTIONS ON USE OF SURFACE

1 Sec. 93.151. REMOVAL OF EQUIPMENT. A mineral developer
2 shall remove equipment, structures, materials, supplies,
3 pipelines, and other property used by the mineral developer in
4 connection with mineral exploration and production operations on
5 the land not later than the first anniversary of the date the
6 mineral developer ceases to use the property.

7 Sec. 93.152. DISPOSAL OF WATER. A mineral developer may not
8 dispose of water or other liquids used in hydraulic fracturing or
9 other mineral exploration and production operations on the surface
10 of the land without the agreement of each surface owner.

11 Sec. 93.153. UNATTENDED MINOR CHILDREN. A mineral
12 developer may not allow minor children of employees of the mineral
13 developer to be unattended on the land without the agreement of each
14 surface owner.

15 Sec. 93.154. PETS. A mineral developer may not allow pets
16 of employees of the mineral developer outside of a vehicle or living
17 quarters on the land without the agreement of each surface owner.

18 Sec. 93.155. HUNTING. A mineral developer may not allow
19 employees of the mineral developer to hunt on the land without the
20 agreement of each surface owner.

21 Sec. 93.156. REPLACEMENT OF SOIL. After the cessation of
22 mineral exploration and production operations, a mineral developer
23 shall fill with soil any trench or depression created by the removal
24 of soil for purposes of those operations.

25 Sec. 93.157. ACCESS TO SURFACE OF LAND. A mineral developer
26 may not block a fire lane, road, or other means of access to the land
27 without the permission of each surface owner.

1 Sec. 93.158. FIRES. A mineral developer's employees may
2 not scavenge wood or start an open fire on the land without the
3 permission of each surface owner.

4 Sec. 93.159. DISPOSAL OF WASTE. (a) A mineral developer
5 shall pick up daily and properly dispose of trash, litter, and other
6 waste generated in the course of mineral exploration and production
7 operations on the land.

8 (b) A mineral developer may not bury waste under the land
9 without the consent of each surface owner.

10 Sec. 93.160. UNNECESSARY EQUIPMENT, MATERIAL, OR VEHICLES.
11 A mineral developer may not bring, store, or park on the land
12 equipment, material, or vehicles that are not related to or
13 necessary for exploration, production, or transportation of the
14 minerals.

15 Sec. 93.161. UNNECESSARY ACTIVITIES. A mineral developer
16 may not conduct activities on the land that are not necessary and
17 reasonable without the consent of each surface owner.

18 Sec. 93.162. USE BY CONTRACTORS AND SUBCONTRACTORS LIMITED
19 TO NECESSARY FACILITIES. A contractor or subcontractor of a
20 mineral developer may use only the access roads, drilling pads,
21 pipelines, or other facilities necessary to perform work in
22 connection with the development of the minerals without the consent
23 of each surface owner.

24 Sec. 93.163. USE OF EXISTING ROADS AND CORRIDORS FOR
25 CONSTRUCTION ACTIVITIES. A contractor or subcontractor of a
26 mineral developer shall:

27 (1) use only existing roads, utility corridors, and

1 routes along the border of the land to the extent practicable; and
2 (2) avoid construction of drill sites, access roads,
3 or pipelines in streamside management zones to the extent
4 reasonable alternatives are available.

5 Sec. 93.164. SANITATION. (a) A mineral developer shall
6 provide portable toilets for use by employees of the mineral
7 developer or contractors or subcontractors of the mineral developer
8 while working on the land.

9 (b) An employee of the mineral developer or of a contractor
10 or subcontractor of the mineral developer may not defecate on the
11 land.

12 Sec. 93.165. GATES. A mineral developer shall keep all
13 gates on the land locked at all times except when entering or
14 exiting the land.

15 [Sections 93.166-93.200 reserved for expansion]

16 SUBCHAPTER E. ENFORCEMENT

17 Sec. 93.201. ADMINISTRATIVE PENALTY. The commission may
18 impose an administrative penalty in an amount and in the manner
19 provided by Sections 81.0531-81.0534 on a person who violates this
20 chapter.

21 Sec. 93.202. CRIMINAL PENALTY. (a) A person commits an
22 offense if the person violates this chapter.

23 (b) An offense under this section is a Class C misdemeanor.

24 SECTION 2. The change in law made by this Act applies only
25 to liability for damage to the surface of land caused by the use of
26 the surface for mineral exploration and production operations on or
27 after the effective date of this Act. Liability for damage to the

1 surface of land caused by the use of the surface for mineral
2 exploration and production operations before the effective date of
3 this Act is governed by the law in effect on the date the damage was
4 caused, and that law is continued in effect for that purpose.

5 SECTION 3. This Act takes effect September 1, 2011.