

Editor's Comment: This is the fourth in a series of articles addressing issues associated with oil and gas development in San Miguel County. The articles were written by participants in PROTECT San Miguel county, a local all-volunteer grass-roots organization. The group has been working with the county's oil and gas task force for three years, has toured several existing oil and gas producing facilities, and has been collecting extensive research on the issues. More information is at <http://PROTECTsmc.org>.

Authors:

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FINANCIAL IMPACT FROM OIL & GAS TO PROPERTY OWNERS

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In 2009 the Santa Fe Opera signed a mineral rights lease to allow oil and gas drilling on a 26,746 acre parcel of mineral rights that had been donated to the Opera. The parcel straddles the Mora and San Miguel County line between I-25 and Highway 518. The opera does not own any surface property in either county.

This situation, where ownership of the surface is different than of the minerals beneath, is called Split Estate. Between 65% and 75% of land in NE New Mexico is under Split Estate. In the eastern US most surface owners, experiencing drilling and fracking, also own the minerals beneath their land – and so receive lease payments and royalties. Surface land owners under Split Estate receive no monetary benefit.

There is no obligation for those involved in leasing the mineral estate to inform the surface owners of the lease and the possibility that operations to extract the minerals (natural gas) could occur. The surface owner has no say in the mineral lease agreement. For example, the Santa Fe Opera lease contained few provisions for protections of the surface or restrictions on drilling and fracking operations.

The mineral estate is the dominant right, which means that if one of the owners of the mineral estate (there can be many owners under one surface property) decides to lease, the surface owner by law has to allow the activity. New Mexico's Surface Owners Protection Act (SOPA), contrary to its name, provides minimal protection against and compensation for damage and loss caused by operators. If the oil and gas operator and the surface owner do not come to an agreement within 30 days, the company can post a \$10,000 bond and drilling will proceed. This

low bond is inconsequential to the oil and gas industry and insufficient to cover typical losses. Meanwhile, if the operator refuses to compensate losses, the surface owner must go to court.

The risk of damage and value losses is so significant that some insurers and some banks such as Wells Fargo and Bank of America are reluctant to deal with properties leased for gas drilling. Without insurance or mortgage availability, selling surface property where drilling and fracking has occurred can be impossible, which means the property has lost much of its value. Additionally, these owners can no longer borrow against their property.

Natural gas leases often contain no insurance and no provision to pay for damage and losses to the surface. By not requiring oil and gas operators to be fully liable and economically responsible for damages, a surface owner will have to first experience the property damage or personal injury, then successfully arbitrate or litigate against the mineral lessee for reimbursement and remediation, a burden most owners can't financially or mentally handle. Homeowners can be confronted with uninsurable property damage that they cannot control.

Recommendations to ameliorate some of these problems include requiring the oil and gas operator to provide 1) financial protections in the amount of the appraised value of the surface property and listing the surface owner as an insured, 2) homeowners insurance coverage, and 3) compensation for surface and groundwater impacts.

The mineral estate owner is also at risk because oil and gas leases are complicated legal contracts. Leasing agents, known as landmen, negotiate for acquisition of mineral rights, and determine ownership of minerals through research of public and private records. Many landmen are attorneys who work for the oil and gas industry. Some landmen have the deserved reputation for being unscrupulous and less than transparent when negotiating oil and gas leases with mineral owners. As an example of the practices that can occur, some mineral owners in Mora were reportedly offered \$1.00 per acre of mineral rights while those in Santa Fe were offered as much as \$5,000 an acre! But this problem is not limited to New Mexico. A "Truth in Leasing" bill on landmen was introduced to the Ohio legislature in 2012 by Representative Mark Okey, who says "Far too many landowners are deceived into signing leases that deny them the compensation and accountability that they are entitled to."

To provide protection to county mineral rights owners, we recommend that landmen be required to have a current county business license and registration, and provide to prospective mineral lessees 1) a County leasing disclosure form, and 2) sources of advocate assistance for understanding and negotiating leases. Further, there should be a requirement for copies of these documents, signed to acknowledge receipt by the property owners, and the lease to be recorded at the County Clerk's office and be submitted with any permit application to drill for oil and gas.

Much of San Miguel County's wealth is in the value of its land. During oil and gas development, this wealth can be destroyed or transferred to others outside the county. The Santa Fe Opera lease is an example of how those outside the local community can enjoy the greatest financial gain while the local landowners and community subsidize the activity by taking the losses.