The Conservation Easement Framework: Surface Use Agreements & Industry Best Practices

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August 10, 2012
Surface Use Agreements

• What is a surface use agreement?
  – Agreements between mineral interest owners and surface owners regarding reasonable use of the surface

• Background law:
  – “reasonable accommodation”
  – C.R.S. 34-60-127

• Relative bargaining power of the parties will affect the terms
Surface Use Agreements and Conservation Easements

• Preserve tax benefits
  – Allow only activities “not irremediably destructive of significant conservation interests” with a “limited localized impact” on land

• Preserve conservation values

• Clarify rights and obligations of all interest owners
Timing of Surface Use Agreements

• No severed estate?
  – The conservation easement is binding on the mineral estate
  – SUA can be done at the time of the mineral lease/development

• Severed estate?
  – At the time of the conservation easement, if possible
  – At the time of the application for permit to drill
    • COGCC rules require notice and a “good faith” consultation (Rule 305, 306)
    • BLM authorization requires negotiation
No Surface Use Agreement?

• No contractual mechanism for assuring compliance with conservation easement

• “reasonable accommodation” always applies

• COGCC Rules and Policies
  – e.g., Rule 317B, Series 800, 1000, 1200
  – On Site Inspection Policy
  – http://cogcc.state.co.us/
Contents of a Surface Use Agreement

• Parties
• Term
• Operations
  – Operation Areas/Wellsites
  – Scope of Access
  – Operation Restrictions
  – Surface facility restrictions
  – Hours of operation/noise/light
  – Remediation and reclamation
  – Notices
• Releases, indemnities, bonds, insurance
• Breach and remedies
• Recording
Illustrations
Practice Pointers

• Know what, if any, interests the surface owner holds
• Integrate documents if possible
• Notice of activities to all parties
• Others?
Questions

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