NEGOTIATING OIL AND GAS AGREEMENTS IN COLORADO

SURFACE USE AGREEMENTS

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Purpose and Benefits of Surface Use Agreements

WHAT IS A SURFACE USE AGREEMENT?

Agreement governing the use of the surface of land by a subsurface mineral interest holder and a surface interest holder.
Purpose and Benefits of a Surface Use Agreement

WHAT HAPPENS WITHOUT A SURFACE USE AGREEMENT?

• “Due regard” common law and statutory requirements apply
• COGCC rules and policies apply
• Land use requirements will apply
• No contractual mechanism for assuring compliance
Purpose and Benefit of Surface Use Agreements

WHEN?

- **No severed estate**
  - At the time of the mineral lease

- **Severed estate**
  - At the time of the drilling application
    - COGCC rules require notice and “good faith consultation”
    - BLM regulations
  - At the time of surface development
Purpose and Benefit of Surface Use Agreements

BENEFITS?

• Rules tailored the rules to the specific site and uses
• Certainty
Topics Typically Addressed

- Locations where oil and gas development may take place
- Operational restrictions
- Releases/waivers of claims
- Indemnification and insurance
- Compliance with laws
- Hazardous materials and spills
- Notice of operations
- Recording
Examples of Competing Use-Specific Approaches and Terms

- Wind
- Commercial/Residential Development
- Conservation
- Agriculture
Examples of Competing Use-Specific Approaches and Terms

OIL AND GAS DEVELOPMENT REQUIREMENTS

• Access to subsurface mineral locations to maximum extent allowed by oil and gas regulations
  – Spacing regulations

• Surface locations for wells, pits, tanks, pipelines, roads
  – Safety regulations
  – Local land use regulations

• Limited operational restrictions
Examples of Competing Use-Specific Approaches and Terms

OIL AND GAS DEVELOPMENT REQUIREMENTS
Examples of Competing Use-Specific Approaches and Terms

WIND DEVELOPMENT

What are the issues?

• No permanent facilities in the turbine “tip zone”
• Transmission lines
• Roads
• Protection for turbines from vibrations, dust, and wind interference
• Construction coordination
Examples of Competing Use-Specific Approaches and Terms

WIND DEVELOPMENT

What are the relevant background requirements?

• Few, if any, specific COGCC requirements
• General COGCC authority available to address “impacts . . . that may not be adequately addressed by COGCC rules and orders.”
Examples of Competing Use-Specific Approaches and Terms

WIND DEVELOPMENT Terms and Conditions?
Examples of Competing Use-Specific Approaches and Terms

COMMERCIAL/RESIDENTIAL DEVELOPMENT

What are the issues?

- Setbacks
- Noise limits
- Safety and environmental protections
- Screening/visual aesthetics
- Traffic/roads
- Public relations
- Catastrophic accidents
Examples of Competing Use-Specific Approaches and Terms

COMMERCIAL/RESIDENTIAL DEVELOPMENT

What are the relevant background requirements?

http://cogcc.state.co.us/
Examples of Competing Use-Specific Approaches and Terms

COMMERCIAL/RESIDENTIAL DEVELOPMENT
What are the relevant background requirements?
Examples of Competing Use-Specific Approaches and Terms

COMMERCIAL/RESIDENTIAL DEVELOPMENT
Terms and Conditions?
Examples of Competing Use - Specific Approaches and Terms

AGRICULTURE

What are the issues?
Examples of Competing Use-Specific Approaches and Terms

**AGRICULTURE**

What are the relevant background requirements?

- **COGCC Rules**
  - Environmental (Rule 324A)
  - Surface owner consultation (Rule 333)
  - Financial Assurances (Series 700)
  - Pits, spills and waste (Series 900)
  - Reclamation (Series 1000)
  - Topsoil, compaction, cover (Series 1100)
Examples of Competing Use-Specific Approaches and Terms

AGRICULTURE

What are the relevant background requirements?

• Onsite Inspection Policy
  – Control noxious weeds
  – Site access and use of existing roads
  – Closed drilling fluid systems
  – Groundwater and surface water sampling
  – Noise mitigation
Examples of Competing Use-Specific Approaches and Terms

AGRICULTURE
Terms and Conditions?

• Rates of compensation for lost crops and diminished production
• Reclamation
• Water use
• Repair and replacement of fences, equipment
Examples of Competing Use-Specific Approaches and Terms

CONSERVATION
What are the issues?

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

• Clarify rights and obligations of all interest owners
Examples of Competing Use-Specific Approaches and Terms

CONSERVATION EASEMENTS

What are the relevant background requirements?

• COGCC Rules
  – Protection of water supplies (Rule 317A)
  – Noise and aesthetics (Series 800)
  – Reclamation (Series 1000)
  – Wildlife (Series 1200)
Examples of Competing Use-Specific Approaches and Terms

CONSERVATION EASEMENTS

What are the relevant background requirements? (cont.)

• Onsite Inspection Policy
  – Visual or aesthetic impacts
  – Surface impacts
  – Noise impacts
  – Dust impacts
  – Groundwater impacts
  – Wildlife impacts
  – Safety impacts
Examples of Competing Use-Specific Approaches and Terms

CONSERVATION EASEMENTS Terms and Conditions?

- Parties
- Term
- Operations
  - Limited pad sites and facility locations
  - Reclamation
  - Operations restrictions
  - Financial assurances are critical
Examples of Competing Use-Specific Approaches and Terms

IN SHORT

• Surface use agreements provide greater certainty
• Know the background requirements
• Bargaining power will affect the terms
Questions

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