AGENDA: Public Lands Mineral Leasing: Issues and Directions

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PUBLIC LANDS MINERAL LEASING: ISSUES AND DIRECTIONS

AGENDA

Monday, June 10, 1985

8:45 - 9:00 Welcome and introduction 2:00 - 2:30  
Dean Betsy Levin  
Professor James N. Corbridge, Jr.  
Larry MacDonnell  
Royalty Management II: Industry Concerns  
R. Carol Harvey, Attorney, Conoco, Inc., Houston, Texas  
The speaker will consider the effect on federal lessees of the changes in the MMS financial and production accounting system for royalty management on federal lands. In addition, the speaker will address the ongoing MMS audit of royalty payments under federal and Indian leases.

9:00 - 9:45 Current Developments in Public Lands Administration 2:30 - 2:45  
Larry McBride, Acting Deputy Associate Solicitor, Department of the Interior, Washington, D.C.  
The speaker will provide an introductory presentation on current public lands administration, including the reorganized responsibilities of BLM and MMS; new developments of interest — especially related to oil and gas and coal; and options for dispute resolution to reach decisions.

9:45 - 10:45 Lands Available For Mineral Leasing 2:45 - 3:00  
John R. Little, Jr., Duncan, Weinberg & Miller, Denver, Colorado  
Administration of the Mineral Leasing Act of 1920 involves a consideration of the historical application of a wide array of other public land statutes, regulations, and interpretations. These laws and policies affect not only the availability of a particular tract but also the lease stipulations that may be attached. A checklist of the most important of these will be provided and problems as to competing entries, withdrawals, wilderness study areas, national forests, and military reservations will be addressed as examples of how Interior has approached decisionmaking in these areas.

10:45 - 11:00 Break 3:00 - 3:30  
11:00 - 12:00 Pitfalls in Federal Oil and Gas Leasing Practice 3:30 - 4:00  
Terry N. Fiske, Davis, Graham & Stubbs, Denver, Colorado  
The speaker will discuss recent changes in regulations and lease forms; kgs problems; lease applications and issuance; bona fide purchaser criteria; sole party in interest problems; citizenship qualifications; acreage chargeability, apd and surface management problems; acquired lands and rights-of-way leasing; lease extensions by operations.

12:00 - 1:30 Lunch 4:00 - 5:00  
Speaker: Robert F. Burford, Director, Bureau of Land Management, Washington, D.C.  
Topic: Federal lands leasing policy in the second Reagan administration  
The Noncompetitive Oil and Gas Leasing System: What Should Be Done?  
Panel discussion:  
— Joe Young, Young, Allott, Foster & Reynolds, Denver, Colorado  
— William L. Shafer, Consultant, House Interior and Insular Affairs Committee, Washington, D.C.  
— Connie Brooks, Mountain States Legal Foundation, Denver, Colorado  
— Abe Phillips, President, Independent Petroleum Association of Mountain States, Denver, Colorado  

Royalty Management III: Questions and Answers  
Break  
Environmental Considerations in Public Lands Mineral Leasing and Development I  
Karin Sheldon, Sierra Club Legal Defense Fund, Denver, Colorado  
There is frequent controversy over the Forest Service and the Department of the Interior’s application of environmental laws to the process of leasing the public lands for mineral exploration and development. The speaker will discuss, from an environmental standpoint, the procedural and substantive constraints imposed on federal agencies and mineral lessees by these statutes, particularly the extent to which the rights of lessees can be affected by the inclusion of environmental conditions and restrictions in leases and permits, and the authority of federal agencies to control or prohibit mineral leasing activities to protect the environment.

Environmental Considerations in Public Lands Mineral Leasing and Development II  
Jerry Muys, Holland and Hart, Washington, D.C.  
This presentation will provide another viewpoint on environmental considerations. The speaker will address preserving environmental protection options in mineral leases; accommodation of environmental protection with recognition of existing property rights; and trends in NEPA applicability.

The Noncompetitive Oil and Gas Leasing System: What Should Be Done?  
Panel discussion:  
— Joe Young, Young, Allott, Foster & Reynolds, Denver, Colorado  
— William L. Shafer, Consultant, House Interior and Insular Affairs Committee, Washington, D.C.  
— Connie Brooks, Mountain States Legal Foundation, Denver, Colorado  
— Abe Phillips, President, Independent Petroleum Association of Mountain States, Denver, Colorado  

Cocktails
Tuesday, June 11, 1985

9:00 - 9:45 Operating Under New Laws Pertaining to Mineral Development on Indian Lands
B. Reid Haltom, Nordhaus, Haltom, Taylor & Taradash, Albuquerque, New Mexico
The speaker will discuss suggested procedures for joint ventures with Indian tribes under the Indian Mineral Development Act and the current issues involving Indian mineral development, including acquisition of mineral rights, accounting and compliance.

9:45 - 10:30 The Federal Coal Leasing Program: Practice, Procedures, Current Status
The presentation will focus on the description of the leasing process for federal coal as conducted on a regional basis. The discussion will also point out the history and background, including laws and policy which have affected coal leasing. The conclusion will provide a status of the current coal program review by the Department of the Interior.

10:45 - 11:30 Special Issues I: Diligence Requirements
Gail Wurtzler, Davis, Graham & Stubbs, Denver, Colorado
This paper will examine the diligence requirements and penalty provisions of the Federal Coal Leasing Amendments Act of 1976. It will focus on a number of practical problems federal coal lessees are facing in the operation and preservation of their leases and will evaluate alternative administrative and legislative solutions.

11:30 - 1:00 Lunch
Speaker: The Honorable Ed Herschler, Governor of Wyoming, Cheyenne, Wyoming (invited)
Topic: State interests in federal lands leasing

1:00 - 1:45 Special Issues II: Lease Adjustments and Royalty Requirements
Marilyn Kite, Holland & Hart, Cheyenne, Wyoming
Prior to the passage of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), federal coal leases were subject to a reasonable readjustment of terms, including royalty, at the end of the first 20-year term. FCLAA imposed sweeping changes to post-1976 federal coal leases, many of which are now being imposed on old leases by the Department of the Interior in the readjustment process. The procedures for readjustment, the options available to both the government and the lessee, and current developments in case law and pending legislation affecting readjustments will be discussed.

1:45 - 2:30 Getting the Coal Leasing Program Back on Track: the Linnowes Commission and Beyond
Professor Sandra Blackstone, University of Denver College of Law, Denver, Colorado
The Federal Coal Leasing Program has been plagued with controversy and delay for over a decade. The most recent episode resulted in the 1984 Linnowes Commission report which DOI is attempting to implement. Legislative, regulatory, and administrative changes are needed to restore public confidence and to respond to industry needs. In addition, the future of coal programs will be heavily influenced by related issues, such as transportation, regulation, environmental concerns, coal utilization technology, and regional market factors.

2:30 - 2:45 Break

2:45 - 3:30 Leases for Other Minerals: Selected Problems
Thomas Cope, Holme Roberts & Owens, Denver, Colorado
Recent developments in the leasing of minerals other than coal and oil and gas will be discussed, including the recent combined lease form; BLM consideration of issuing separate regulations for each mineral commodity; issuance of prospecting permits and preference right leases for hardrock minerals; definitions of "valuable deposit" and "chiefly valuable" for preference right leasing purposes; leasing of minerals other than oil, gas, and sulfur in the Outer Continental Shelf or Exclusive Economic Zone; and the present status of oil shale leasing programs.

3:30 - 4:15 State and Local Regulation Affecting Public Lands Mineral Lease Activities: What Are the Limits?
Lawrence J. MacDonnell, Natural Resources Law Center, University of Colorado School of Law, Boulder, Colorado
Ventura County v. Gulf Oil Corporation has been viewed by some to bar state and local regulation affecting mineral development on the public lands. However, recent decisions in Wyoming and California suggest that there may in fact be considerable room in which permissible state and local regulation may operate. This presentation will address the fundamental federal and state interests that are involved and will consider important recent developments in the related law.

4:15 Adjournment
CONFERENCE ORGANIZER

LAWRENCE J. MacDONNELL (B.A. Political Science, University of Michigan, 1966; J.D. Natural Resources Law, University of Denver College of Law, 1972; and Ph.D. Mineral Economics, Colorado School of Mines, 1974) became Director of the Natural Resources Law Center in November 1983. Prior to that he was a research economist at the Denver Research Institute and Adjunct Professor at the Graduate School of Business and Public Management at the University of Denver, 1980-83. He has served as a consultant to the Colorado Office of Energy Conservation, as an instructor and course director for the Colorado Outward Bound School, as Assistant Professor in the Dept. of Mineral Economics at the Colorado School of Mines, and as a Special Insular Affairs. He is a member of the Colorado Bar Association and the Association of Environmental and Resource Economists.

FACULTY: PUBLIC LANDS MINERAL LEASING: ISSUES AND DIRECTIONS JUNE 10-11, 1985

SANDRA L. BLACKSTONE (B.A. University of Vermont, 1969; J.D. University of Denver College of Law, 1977; Ph.D., Mineral Economics, Colorado School of Mines, 1979) is a professor of law at the University of Denver College of Law where she teaches natural resources and administrative law. From 1981 to 1983, she served as Deputy Director for Energy and Minerals of the Bureau of Land Management in Washington, D.C. Prior to joining the BLM, Ms. Blackstone served in management, legal, and consulting capacities on energy and mineral related issues for both public and private sector organizations. Previous positions include Manager of Business Development for Synthetic Fuels with Rocky Mountain Energy Co.; consultant to W. R. Grace and Co., Colowyo Coal Co., Colorado School of Mines, and Colorado Energy Research Institute; and associate with the law firm of Dawson, Nagel, Sherman & Howard. She was recently appointed to the National Coal Council by the Secretary of Energy and serves on the National Academy of Sciences Board on Mineral Energy Research.
ROBERT E. BOLDT has held his present position as head of the Royalty Management Program at the Department of the Interior since May of 1982. He is responsible for the collection and accounting of all royalties, bonuses, and rents on Federal and Indian leases. Prior to joining the Department of the Interior, Mr. Boldt served in Senior-level positions at the Department of Energy and the Department of Housing and Urban Development. An economist by training, he also holds a master's degree in Public Administration from Harvard University and masters degree in Business Administration from George Washington University.

CONSTANCE E. BROOKS (Undergraduate degree, Louisiana State University, 1973; J.D. Tulane Law School, 1977) is Vice President and General Counsel of Mountain States Legal Foundation, a conservative public interest legal foundation in Denver, Colorado. She came to the Foundation three years ago, following five years in Washington, D.C. where she was a member of the law firm Birch, Horton, Bittner, Monroe, Pestinger, and Anderson. At the Mountain States Legal Foundation, she heads up the natural resources litigation effort. The Foundation's cases concern grazing rights, access to public lands, impact of the National Environmental Policy Act on oil and gas leases, impact of environmental legislation on state water appropriation laws and interstate water compacts, and protection of private rights in the land use planning process.
ROBERT F. BURFORD (Engineer of Mines degree, Colorado School of Mines, 1944) is the Director of the Bureau of Land Management. He was appointed to this position by President Reagan in 1981. Previously he worked as a mining engineer for Permanente (Kaiser Aluminum Company in California and Jamaica (1948-49) before returning to Colorado to operate sheep and cattle ranches in Eagle and Mesa Counties until 1981. He served three terms in the Colorado House of Representatives. He is a member of the Colorado Cattlemen's Association, the National Cattlemen's Association, Colorado Farm Bureau, the Colorado Woolgrower's Association, and the Professional Engineers of Colorado. He is a member of the Board of Directors of Reed Miller, Inc. of Grand Junction and Central Bancorporation, Inc. of Colorado.

THOMAS F. COPE (B.A. University of Denver, 1970; J.D. University of Denver College of Law, 1974) is a partner in the Denver law firm of Holme Roberts & Owen. He specializes in natural resources law. While at the University of Denver College of Law he was a member of the Board of Editors of the Denver Law Journal. Mr. Cope's publications include Chapter 20, "Non-Coal Mineral Leasing" and Chapter 21, "Disposal of Mineral Materials" for the second edition of the American Law of Mining.
TERRY N. FISKE (A.B. 1955, J.D. 1960, University of Kansas) is a partner in the firm of Davis, Graham & Stubbs in Denver. His practice has been concentrated in all phases of natural resources, particularly in the western and mid-continent areas, including oil and gas, coal, uranium, and other minerals, and water, involving private, Indian, and public lands. Such practice includes service to clients in acquisition, exploration, and development of properties, forms of business organizations, and structures of multi-party ventures, environmental matters, taxation, and securities concerns, and appearances before administrative agencies and compliance and laws and administrative regulations. He has published numerous articles in the areas of mineral development, mining, and Indian law, and most recently "Title X, Creation and Transfer of Mineral Interests" for the American Law of Mining 2nd. He is a member of the Mining Law Review Committee and Public Lands Committee of the Colorado Mining Association and general program chairman of the Natural Resources Law Section of the American Bar Association. He is a Trustee and a member of the Executive Committee of the Rocky Mountain Mineral Law Foundation.

B. REID HALTOM (B.A. University of New Mexico, 1969; J.D. Texas Tech University, 1972) is a partner with Nordhaus, Haltom & Taylor in Albuquerque, New Mexico. The firm specializes in Indian affairs, energy and natural resources, water law, and environmental law. Mr. Haltom has been practicing in the area of Indian Affairs Law for twelve years. His firm represents the Jicarilla Apache Tribe, the Pueblo of Laguna, two associations of Indian Allottees (Navajo and Shoshone and Arapahoe), and was formerly minerals counsel for the Blackfeet Tribe. He has been extensively involved in Indian oil and gas issues and joint ventures.
R. Carol Harvey (B.A. Economics & Political Science, University of Denver, 1977; M.B.A. University of Denver, 1981; J.D. University of Denver, 1981) is an attorney in the Exploration and Production Division, Upstream Division of Conoco Inc. in Houston, Texas. Previously she has been a landman, and then attorney, in Conoco's Minerals Department in Denver (1981-83). She is chairman of the American Petroleum Institute Task Force on Minerals Management Services Production Accounting and Auditing System, and co-chairman, Mid-Continent Oil and Gas Association Ad Hoc Committee on Unclaimed Property. She is also a member of the American Petroleum Institute Task Force on Royalty Management; Rocky Mountain Oil and Gas Association's Legal Committee; and the American Petroleum Institute Task Force on Section 3 of the Federal Coal Leasing Amendments Act of 1976.

Governor Ed Herschler is the first person in the history of the State of Wyoming to be elected to three terms as governor. He is a native of Wyoming, and attended public schools in Lincoln County, Wyoming. He attended the University of Colorado for his pre-law training, and graduated from the University of Wyoming Law School in 1949. He served with the U.S. Marine Corps in World War II, and was awarded the Purple Heart and Silver Star. His public service career includes Kemmerer town attorney, Prosecuting Attorney, and representing Lincoln County in the Wyoming House of Representatives for five terms. He is a past chairman of the Interstate Oil Compact Commission, Western Governors' Policy Office, and the Western Governors' Conference. He has also served as chairman of the Corrections Projects of the Education Commission of the States and is a past co-chairman of the Old West Regional Commission. He is currently a member of the U.S. Trade Representative's Intergovernmental Policy Advisory Committee.
Marilyn S. Kite is a partner in Holland & Hart's Cheyenne, Wyoming office. She graduated from the University of Wyoming College of Law in 1974, after which she joined the Natural Resource Division of the Wyoming Attorney General's office. As a Senior Assistant Attorney General, she participated in the drafting and promulgation of Wyoming's initial environmental quality regulations. Since joining Holland & Hart in 1978, she has continued in natural resource practice, including coal readjustment, air quality, and public utility law.

John E. Latz (B.S., Mechanical Engineering, attended Rice University and the University of Houston) is Deputy Director for Energy and Minerals in the Interior Department's Bureau of Land Management. He brings to this position 35 years of minerals and managerial experience from both the private and governmental sector. He is responsible for overseeing the management of the onshore Federal mineral estate which covers more than 650 million acres, nearly one-third of the land area of the United States. Latz had previously served as Senior Vice President of the Northern Tier Pipeline Company. He has also served as a consultant to the mining industry, as an Assistant to the Under Secretary of the Interior Department and as Assistant to the Vice President of the United States Steel Corporation.
JOHN R. LITTLE, JR. (B.A., LL.B., University of Colorado) is an attorney and principal of the Washington, D.C. and Denver, Colorado firm of Duncan, Weinberg & Miller, P.C. He was formerly Regional Solicitor, Rocky Mountain Region and Associate Solicitor, Energy and Resources of the Department of the Interior. As Regional Solicitor from 1974 to 1983 he served as principal legal adviser to heads of field installations of the various bureaus and agencies of the Department in a ten state region and supervised the work of attorneys in the Regional office in Denver and field offices in several locations. He was appointed as the federal representative to the proposed California-Nevada Interstate Compact involving the Truckee, Carson, and Walker Rivers and Lake Tahoe. In 1980, he also served as Associate Solicitor, Energy and Resources. He has written and lectured on a variety of natural resource and construction contract matters. He also recently co-authored an article entitled "Meandering Through The Interior Maze" (with Weinberg), Natural Resources & Environment.

LAWRENCE G. McBRIDE (A.B. English Literature, with distinction, Stanford University, 1970; J.D. Boalt Hall School of Law, University of California, Berkeley, 1973) held the position of Acting Deputy Associate Solicitor, Energy and Resources Solicitor's Office, USDOI from May 1984 to May 1985. This division advises BLM, MMS, and the Bureau of Reclamation and Secretarial officials on all activities of these agencies. Since 1979 he has held the position of Assistant Solicitor, Onshore Minerals. This branch of the Solicitor's office provides advice under the Mineral Leasing Act, the general mining laws, and all other laws related to mineral development on public lands. Previously he has been a staff attorney in the Solicitor's office, working on mineral issues offshore and onshore, and for the Interior Board of Land Appeals.
JEROME C. MUYJS is the senior partner resident in the Washington, D.C. office of the law firm of Holland & Hart. He has practiced in Washington, D.C. for over twenty-five years in the natural resources, public utilities and environmental fields. From 1966 to 1970 he served as Assistant General Counsel and Chief of the Legal Staff of the Public Land Law Review Commission. He is a past Chairman of the Natural Resources Law Section of the American Bar Association (1980-1981). His particular fields of expertise are western water, public lands, and energy matters of all kinds.

ADRIAN A. "ABE" PHILLIPS (B.S., Geology, University of Oklahoma, 1949) is President of Coors Energy Company. Before the formation of Coors Energy in 1981 he was V.P. of Energy for the Adolph Coors Company. He started his career with Humble Oil & Refining Company, West Texas Division. He worked for Humble in various locations throughout the western and southwestern U.S. before being transferred to Sydney, Australia with ESSO Exploration. After returning to Humble offices in Houston and Denver as Division Geologist, he became Exploration Manager for P.T. Stanvac, an ESSO-Mobil Company in Jakarta Indonesia and for ESSO Exploration for Southeast Asia in Singapore. He then returned to Denver with Exxon as Manager, Western Exploration Division. He is president of IPAMS, and also a member of AAPG, RMOGA Public Lands Committee, IPAA Public Lands Committee, and the IPAA Executive Committee.
WILLIAM L. SHAFER (Geologic Engineering) serves on the Committee on Interior and Insular Affairs of the U.S. House of Representatives. He is a consultant in Public Lands and Mines and Mining. Previously he has been an industrial engineer for Remington Arms Co. and E. I. duPont de Nemours & Co. (1941-44); he served in the U.S. Navy (1944-46); he worked with the Corps of Engineers in the area of land appraisal and valuation of mineral properties (1946-48); he did land and mineral work, as well as examination of public lands, in the west for the Bureau of Land Management (1948-55); and then he became Chief of the Division of Minerals, Bureau of Land Management, in Washington, D.C. (1955-65).

KARIN P. SHELDON (A.B. Vassar College, 1967; J.D. University of Washington Law School, 1970) is a staff attorney with the Sierra Club Legal Defense Fund in Denver, and counsel for the Sierra Club and other conservation groups in the Rocky Mountain region, with emphasis on litigation involving public lands. She is also an Adjunct Professor at the University of Denver College of Law, teaching courses in public land law. Previously she has been a partner in the law firm of Sheldon, Harmon & Weiss (1977-80); and an associate and partner with Roisman, Kessler & Cashdan (1974-77), both public interest law firms in Washington, D.C. She was also a member of Ralph Nader's Public Interest Research Group in Washington, D.C. (1970-71).
GAIL L. WURTZLER (B.A., with honors, University of Wisconsin, 1978; J.D. University of Chicago, 1981) is an associate with the law firm of Davis, Graham & Stubbs in Denver. She is an editor of Natural Resources & Environment, the publication of the Section of Natural Resources Law, the American Bar Association. She is a member of Phi Beta Kappa and Phi Kappa Phi.

J.O. YOUNG (B.S. Kansas State University, 1950; J.D. Washburn University, 1951) is a partner with the Denver law firm of Young, Allott, Foster & Reynolds. He has practiced in the field of oil and gas law in Denver since 1968. Previously he was with the Land Department of Stanolind Oil & Gas Co. in Casper, Wyoming (1951-53); in the Law Department of Pan American Petroleum Corporation (1953-64); and he served as General Counsel of the U.S. Natural Resources Corporation in Beverly Hills, California (1964-68). He has been an instructor and speaker at numerous conferences on the subjects of oil and gas operating agreements, delay rentals, curing land titles, real property law, oil and gas title examination, and legal developments affecting the oil and gas industry.