The Rocky Mountain

L · A · N · D · M · A · N

Volume 41 Issue 10 www.dapldenver.org May 2024

May 15, 2024 | 11:30 AM - 1 PM

11:30-12:00: Networking and Buffet
12:00-12:50: Presentation
12:50-1:00: Q&A

Permian Basin Expansion
Ovintiv & SM Energy's Role in Expanding the Bass

Matthew Myers is a seasoned professional in the oil and gas industry, currently serving as the Director of Texas Land for Ovintiv USA Inc. With nearly two decades of experience in the oil and gas business, Matthew has garnered a reputation for his strategic leadership, methodical negotiation style, and expertise in land management.

Prior to his role at Ovintiv, Matthew spent 12 years at QEP Resources, where he served as the Land Manager for the company's Bakken and Permian assets. During his tenure, he played a pivotal role in driving the company's land strategy and overseeing significant A&D initiatives. During his career, Matthew's notable achievements include leading teams responsible for orchestrating acquisitions and divestitures of oil and gas assets totaling over $20 billion dollars.

In his personal time, Matthew enjoys retreating to his condo in Granby for peaceful getaways with his family and indulges his passion for golf whenever time permits.

Hans Swolfs is the Land Manager for SM Energy's Permian Business Development team. He has over 18 years of experience in land and business development with 14 years at SM Energy. Hans has worked various roles from broker to land administration to his current role in BD covering the Rockies, Mid-continent and South and West Texas. Hans has helped transform St. Mary Land and Exploration Company, historically with a buy and exploit business model to what SM Energy Company is today, a top tier unconventional upstream E&P. Hans has been involved in over $3B in A&D efforts over his career to aid in this transition. Hans is a proud graduate of the University of Colorado, and spends his free time with his beautiful wife, Angie, and three adorable kids, Henri, Alice and Pattison.

$45 for DAPL Members
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Virtual & In Person Option

The University Club
1673 Sherman St. Denver, CO 80203

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UPCOMING EVENTS

- DAPL May Happy Hour
- DAPL Annual Golf Tournament
- DAPL 40th Annual Clay Shoot
- DAPL September Luncheon

The Denver Association of Professional Landmen
Telephone: (303) 446-2253
E-Mail: dapl@dapldenver.org
Web Site: www.dapldenver.org
Mailing Address:
730 17th Street, Suite B1
Denver, CO 80202

The Denver Association of Professional Landmen is a non-profit organization operated by its membership for mutual benefit to further the knowledge and interests of Professional Landmen, and to better acquaint the public with the scope of the Landman's work.

The Rocky Mountain Landman is a publication of the Denver Association of Professional Landmen.

Tabatha Reed
DAPL Office Administrator
Phone: (303) 446-2253

Column Coordinators:

Education	**Bresee Carlson** **Crosby Garrison**
Minutes	**Chad Sullivan**
Legal	**Estee Sanchez**

Contributions from our readers are welcome. All suggestions and manuscripts should be emailed to the editor at the DAPL office. We reserve the right to edit all material according to standard practices.

Bylined and credited articles represent the view of the authors; publication neither implies approval of the opinions expressed nor accuracy of the facts stated.

2024/2025 EXECUTIVE BOARD

Thank you to all of the Active Members that voted for the 2024/25 Executive Board.

The newly voted Executive Board Members will officially take office on June 1, 2024

James Culbertson - 1st Vice President
David Connolly - Vice President
Tammy Zamarripa - Secretary
Jason Rayburn - Treasurer
Anna Morgan - Director

They will join the previously elected/rolling Executive Board Members listed below

Laurie Wizeman - President
Crosby Garrison - Director
Tyler Aylor - AAPL Directory
Gil Guethlein - Immediate Past President

April Board Meeting Minutes

(to be approved at May Board Meeting)

will reflect March Board Meeting minutes and will be published in the Summer Issue of the Rocky Mountain Landman

Officer's Forum—President

Esteemed Colleagues,

It was my privilege to serve as DAPL President for the 2023-2024 fiscal year. The land profession is undergoing a period of immense change, and I am proud of DAPL's continuing work to ensure that our membership is informed, adept, and adaptable.

In the spirit of staying informed, I would like to call your attention to two court cases in Texas to keep an eye on -- *Cromwell v. Anadarko E&P Onshore, LLC*, 676 S.W. 3d 860 (Tex. App. 2023) and *Van Dyke v. Navigators Grp.*, No. 21-0146, 2023 WL 2053175 (Tex. Feb. 17, 2023). In *Cromwell*, the Texas Court of Appeals calls into question the preservation of leasehold by a non-operating working interest holder via mere participation in an operation resulting in production. In *Van Dyke*, the Supreme Court of Texas held that a reservation of "one-half of one-eighth" mineral interest may reserve one-half of all of the mineral interest. The former case was the topic of discussion at the DAPL Luncheon in March and the latter was discussed at length at HAPL's Technical Workshop in May.

Education is a cornerstone of the DAPL's mission. In recent years, we have watched the landman craft propagate across industries, from traditional oil and gas, to new forms of energy and energy transmission, to carbon sequestration, and beyond. Whether through monitoring the evolution of seemingly settled land principles, like in the cases above, or serving as a resource to learn new applications of the profession, I am confident DAPL will continue to serve our growing community.

I hope everyone will join me in welcoming the leadership of Laurie Wizeman and the 2024-2025 Board of Directors. We can expect great programming from this accomplished team.

Finally, thank you to Tabatha Reed, DAPL's dedicated Office Administrator, for your tremendous support during my tenure as President.

I look forward to seeing you at our upcoming events!

Best to all,

-Gil Guethlein, CPL, (soon-to-be) Immediate Past President

2024/25 Membership Renewal Period Now Open

You can renew your membership for 1 or 3 years using the below link.

You will be prompted to log in

DAPL Membership Renewal (click here)

Renewals are due by June 1st

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From a Legal Perspective

BLM Announces Final Public Lands Rule

On March 30, 2023, the Bureau of Land Management ("BLM") proposed the Conservation and Landscape Health Rule, which was later renamed the Public Lands Rule. After 90 days of public comment, five public meetings, and over 200,000 public comments, the BLM announced its final Public Lands Rule ("Rule") on April 18, 2024.

Background

The BLM, which operates under a multiple-use mission set forth in the Federal Land Policy and Mineral Act of 1976 (FLPMA), manages approximately 245 million surface acres and 700 million subsurface acres. Pursuant to 43 U.S.C §1701(a)(7), management by the BLM under FLPMA must be on the basis of both multiple use and sustained yield. "Multiple use" is defined as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people. "Sustained yield" is defined as the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

FLPMA identifies six principal or major uses, which include and are limited to: domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

Public Lands Rule

The BLM identifies three main components of the final Rule: 1) to protect the most intact, healthiest landscapes; 2) to restore landscapes back to health; and 3) to ensure that decision-making is based on science and data.

1. **Protection of the most intact, healthiest landscapes.** The provisions of the final Rule prioritize the management of the most intact, healthiest landscapes for wildlife habitat and clean water, conservation of healthy public lands, support of locally driven conservation, and support of consistent management. In order to meet these objectives, the Rule sets forth the use of **Areas of Critical Environmental Concern (ACECs)** for these landscapes. ACECs are defined as areas within the public lands where special management attention is required to prevent irreparable damage to important historic, cultural, or scenic values, fish or wildlife resources, natural systems or process, or a natural hazard potentially impacting life and safety. Under the Rule, ACECs are to be addressed in the land use planning process, in revisions or amendments of land use plans, or can be identified and nominated outside of a land use planning process, including for temporary protections. ACECs must meet three criteria: relevance, importance, and need for special management attention. The Rule requires the BLM to manage designated ACECs in a manner that conserves, protects, and enhances the relevant and important values and only allows the BLM to remove the ACEC designation in very limited circumstances.

2. **Restoration of landscapes back to health.** The Rule elevates conservation and restoration to the same level as the six principal and major uses identified in FLPMA. The BLM justifies this change based upon climate change, drought, wildfires, and development. The Rule directs identification of landscapes in need of restoration, development plans to put restoration into action, and creation of a framework for both restoration and mitigation leases. The Rule establishes a process to apply for and grant restoration and mitigation leases, terminate or suspend them, determine non-compliance, and set bonding obligations. Restoration or mitigation leases can be issued to qualified individuals, businesses, non-governmental organizations (NGOs), Tribal governments, conservation districts, or State fish and wildlife agencies; however, they may not be held by foreign persons or entities.

   Restoration leases will be authorized for the process or act of conservation of land and resources by passively or actively assisting in the recovery of an ecosystem that has been degraded, damaged, or destroyed to a more natural, resilient ecological state. The BLM will identify rangelands that need restoration work and issue leases for a maximum of 10 years.

   Mitigation leases will be authorized to offset impacts to resources resulting from other land use authorizations. A mitigation lease will be issued for a term commensurate with the impact that it is mitigating, but all activities taken under the lease will be reviewed every five years for consistency with the lease provisions.

   While a restoration or mitigation lease is in place, casual uses of the leased lands, such as recreation, hunting and fishing, and research activities would generally continue. However, if the proposed activities in a restoration or mitigation lease would conflict with existing authorizations on the same lands, then the lease will not be issued.

From a Legal Perspective cont'd.

Restoration and mitigation leases will also not preclude subsequent authorizations on leased lands so long as those subsequent authorizations are compatible with the restoration or mitigation activities identified in the lease.

3. **Decision-making based on science and data.** When taking management actions under the Rule, the BLM is to leverage science and data, including Indigenous Knowledge, to guide decision making, emphasize best management practices for public input, and expand the applicability of land heath standards. Prior to the Rule, the BLM only applied the land health standards to grazing decisions, but has now broadened their applicability to all BLM lands and program areas, in order to protect healthy landscapes, restore degraded habitat, and help ensure informed decision-making.

   Section 6103.1 of the Rule, **Land Health Standards**, directs the BLM to work to ensure 1) watersheds support soils, plants, and water quality and quantity; (2) ecosystems provide healthy populations and communities; (3) water quality complies with State water quality standards; and (4) wildlife habitats are progressing towards restoration for threatened and endangered species. Under the Rule, the BLM will complete land health evaluations on a periodic basis, at least every 10 years, relying on watershed condition assessments at landscape scales whenever possible. The Rule also requires the BLM to complete watershed condition classifications in land use planning efforts.

Discussion

Several legal issues are involved with the issuance of the final Public Lands Rule. First, the governing language in FLPMA clearly states that BLM uses are limited to the six principal or major uses, including mineral exploration and production. While conservation has always been a goal of the BLM, Congress has not granted additional statutory authority to the BLM to add restoration and mitigation leases or conservation as a specified use.

Second, conservation under restoration and mitigation leases is likely a use incompatible with the six principal and major uses identified in FLPMA, resulting in prioritization of non-development and restriction on multi-use management and sustained yield. The Rule also has the potential to prevent access to federal land by the public and by future and current BLM permittees in the name of conservation. This prioritization over other long-term multi-uses is likely to result in future litigation.

Third, the provisions regarding restoration and mitigation leases create a non-competitive process with no clearly defined guidelines, no size limits, and a lease period of up to 10 years. The ambiguity in these provisions grants the BLM great latitude in granting these types of conservation leases, while the BLM is simultaneously restricting or banning other principal or major uses, such as the BLM's recent 20-year ban on mining and oil and gas activity in Colorado's Thompson Divide.

Fourth, the Area of Critical Environmental Concern rule change will likely take more federal land out of production in a manner similar to applications of the Antiquities Act. This could be detrimental to several of the multiple uses on federal lands, and especially to states whose economies rely heavily on mineral exploration and production on federal lands.

In response to the proposed Rule, U.S. Rep. John Curtis (R-Utah) introduced H.R. 3397, the Western Economic Security Today (WEST) Act, which would require the BLM director to permanently withdraw the rule. Additionally, several states and private groups are currently preparing to challenge the legality of the final Rule in Federal Court.

Until Congress acts or a federal court renders a decision on the Rule's legality, however, a prudent operator should diligently review the BLM's records for any applications for restoration or mitigation leases, and be involved with any land use development plans which identify ACECs in areas in which the operator has current leases or future plans to lease or develop mineral interests on federal lands. In addition, the operator should review its current development practices and ensure that they comply with the newly applicable land health standards.

Julie K. Palmer
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THANK YOU VOLUNTEERS

Matt Hoppe

Julie White

Patti Vogl

David Connolly

James Hubert

Kajsa Gotlin

Jason Rayburn

DAPL

Community Service Committee

Saturday, April 13th Family Homestead Volunteer Day

These 7 people knocked out an entire
4-bedroom, 2-bath unit!

THANK YOU VOLUNTEERS

DAPL

DENVER ASSOCIATION OF PROFESSIONAL LANDMEN

DAPL 2024
40th ANNUAL CLAY SHOOT

FRIDAY, AUGUST 23, 2024

COLORADO CLAYS

Registration Opening June 3rd!

DAPL

Happy Hour

May 9th | 4:30-6:30pm

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2024 DAPL Calendar of Events

May 2024

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7 Education Committee Meeting	8 Board Meeting	9 Happy Hour	10	11
12	13	14	15 Luncheon	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

June 2024

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12 Board Meeting	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

May 2024

7th-Education Committee Meeting
8th-Board Meeting
9th - May Happy Hour - *see page 1 for more information*
15th-Luncheon - last one before summer break! - *see page 9 for more information*
31st-Last Day for 2023/24 Executive Board

June 2024

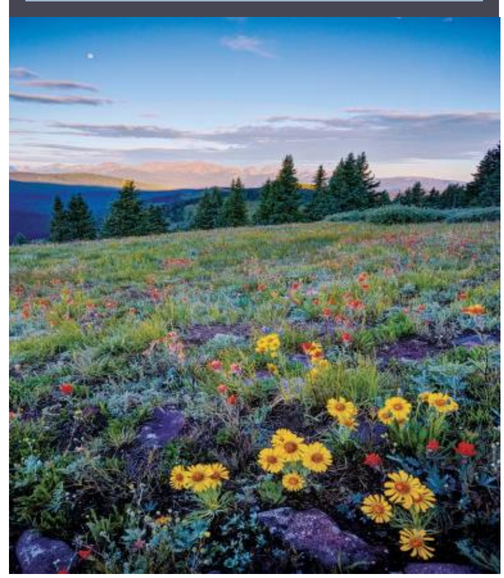
1st-First Day for 2024/25 Executive Board - *see page 2 for more information*
12th-Board Meeting

July 2024

9th-Education Committee Meeting
10th-Board Meeting
19th - Annual Golf Tournament - *see pages 11-13 for more information*

August 2024

13th-Education Committee Meeting
14th-Board Meeting
23rd - 40th Annual Clay Shoot - *see page 8 for more information*



DAPL 2024 GOLF TOURNAMENT

REGISTRATION FILLING UP!

This year the tournament will once again be held at the Ranch and River Golf Courses in Keystone, Colorado on Friday, July 19th, 2024

The Golf Tournament is a wonderful opportunity to network, see old friends, and make new acquaintances. There will be team prizes for 1st place in all three flights and of course, as usual, great food, great prizes, and giveaways for participants.

TOURNAMENT: Limited to 54 teams (216 golfers)!

ENTRY FEE: $300.00 - Member / $325.00 - Non-Member *(Entry fee includes green fee, cart, range balls, breakfast, and lunch)*

REGISTRATION: Registration is on a first come, first serve basis and you are **not** considered registered until the entry fee has been received. ****No Refunds after June 14th. Substitutions allowed****

TOURNAMENT DAY: Check-in will begin for all golfers at 8:00 a.m. on Friday, July 19th, 2024 in front of the clubhouse(s). The driving ranges will be open with breakfast available. The tournament will begin with a shotgun start promptly at **9:30 a.m.**

FORMAT: 4-Person Scramble.

MULLIGANS: Available for purchase at check-in ($15/each - No Limit). ****Please bring CASH****

The Golf Tournament is the major fundraiser for the DAPL Scholarship Fund, Inc., which funds scholarships to college students enrolled in accredited Petroleum and Energy Management Programs. Sponsorship funds will also be used to help defray the costs of the tournament. Funds in excess of those expenses will supplement DAPL's general operating fund.

THANK YOU 2024 GOLF TOURNAMENT SPONSORS!

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Sponsorship Opportunities Available

- **Titanium** **$1800**
  - ***Includes a foursome of golf***
  - Includes one-month free advertising on the DAPL website
  - ***Add a tent on a tee box for only $500 more w/ a Titanium Sponsorship***
    - (please contact Teale Stone for details)

- **Platinum** **$1000**
  - Allows you to have a tent on a tee
    - (please contact Teale Stone for details)
  - Includes one-month free advertising on the DAPL website

- **Golf Ball Company Logo Sponsor** (54 dozen-Vice Balls) **$1750**
  - ***~~3 available~~ – 2 available***

- **Driving Range Sponsor** (signs on driving range) **$1000**
  - ***~~2 available per course~~***
    - ***2 available for the Ranch Course***

- **Putting Green Sponsor** (signs on putting greens) **$1000**
  - ***2 available per course.*** *Please specify course preference.*

- **Gold** **$500**
  - Includes one-month free advertising on the DAPL website

- **Tee Box Sponsor** (sign on one individual tee box) **$250**
- **Tee Box Sponsor** (sign on two individual tee boxes) **$350**
- **Tee Box Sponsor** (sign on three individual tee boxes) **$500**

- ~~**Golf Tees Company Logo Sponsor** **$500**~~

- ~~**Ball Markers Company Logo Sponsor** **$600**~~

- **Beverage Cart Sponsor** **$550/each**

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If you would like to pay by credit card please contact the DAPL.
phone: (303) 446-2253; email: dapl@dapldenver.org
THANK YOU! As always, your support is greatly appreciated by all members of the DAPL!

Field Landman Question

Dormant Mineral Acts and Marketable Title Acts

A DAPL member has asked: "What is the difference between a dormant mineral act and a marketable title act?"

Many oil and gas producing states have statutes that are commonly referred to as dormant mineral acts (DMAs) and marketable title acts (MTAs). Some states have only a DMA or only an MTA, while several others have adopted both (which may, at times, be considered to work in concert). It is important for land professionals to be acquainted with the specific provisions of each DMA and/or MTA that apply in the state(s) where they operate.

In general terms, these laws may have similarities in their impact on record title, as both DMAs and MTAs establish a period of time after which an owner's claim to certain real property interests may ripen and extinguish outdated interests of a previous owner. Beyond that, however, DMAs and MTAs are substantively quite different statutes, with distinct policy goals. DMAs are aimed at promoting mineral development by, under specific circumstances, terminating the interests of severed mineral owners who fail to 'use' their mineral interests. In contrast, the purpose of an MTA is to simplify and enhance the reliability of record title to real estate by promoting the claim of an owner with a long-standing, uncontested chain of title to the property in question.

The easiest way to grasp the differences between DMAs and MTAs is by way of example. For present purposes, let's briefly consider the DMA and MTA in effect in North Dakota.

<u>DMA</u> – North Dakota's version of the DMA is found in North Dakota Century Code Chapter 38-18.1 ('Termination of Mineral Interest'). Under N.D.C.C. § 38-18.1-02, "[a]ny mineral interest is, if unused for a period of twenty years immediately preceding the first publication of notice required by § 38-18.1-06, deemed to be abandoned, unless a statement of claim is recorded in accordance with § 38-18.1-04. Title to the abandoned mineral interest vests in the owner or owners of the surface estate in the land in or under which the mineral interest is located on the date of abandonment." In order to preserve a severed mineral interest, the owner thereof must either record evidence of its claim to the interest, or otherwise ensure that the interest does not go "unused" for the 20-year statutory period.

N.D.C.C. § 38-18.1-03 sets forth the circumstances in which a severed mineral interest "is deemed to be used," and is therefore not subject to abandonment under the DMA. These 'savings events' continue to preserve a mineral interest under the DMA while any of the following are occurring: (i) actual production of minerals; (ii) "operations are being conducted thereon for injection, withdrawal, storage or disposal of water, gas or other fluid substances;" (iii) the "mineral interest on any tract is subject to a lease, mortgage, assignment, or conveyance" of record; (iv) the interest is subject to an active pooling or unitization order or agreement; or (v) "a proper statement of claim is recorded" in accordance with the specifics in N.D.C.C. § 38-18.1-04.

N.D.C.C. § 38-18.1-04 provides specifics for the timing and recording of a statement of claim required to preserve a severed mineral interest under the DMA. Generally, this must be within any 20-year period of non-use that might be grounds for abandonment. Note, however, that the DMA in North Dakota is not 'self-executing' (automatic); as mentioned above, the relevant lookback period is measured in reference to the timing of a notice of lapse as required under N.D.C.C. § 38-18.1-06. That section provides that as a condition to establishing a claim to subsurface minerals pursuant to the DMA, the "owner or owners of the surface estate … intending to succeed to the ownership of a mineral interest upon its lapse shall give notice of the lapse of the mineral interest by publication" as specified therein. The severed mineral owner then has a final grace period under N.D.C.C. § 38-18.1-05, which preserves the mineral interest if a statement of claim or evidence of adequate use of the minerals is recorded within sixty (60) days of the surface owner's publication notice.

<u>MTA</u> – On the other hand, North Dakota's Marketable Record Title Act, codified in North Dakota Century Code Chapter 47-19.1, is centered around the specific definition of what constitutes "marketable title" in the Peace Garden State. Per N.D.C.C. § 47-19.1-01, "any person that has an unbroken chain of title to any interest in real estate and that person's immediate or remote grantors under a conveyance or other title transaction that has been of record for a period of twenty years or longer, and is in possession of the interest, is deemed to have a marketable record title to the interest," subject only to the exceptions set forth in Chapter 47-19.1. This unbroken chain of title means that the owner has a 'root of title,' or a deed purporting to convey to the owner [or the owner's predecessor] the property or interest therein, and that there is no other recorded evidence of any competing claim to that property or interest for the continuous 20-year period.

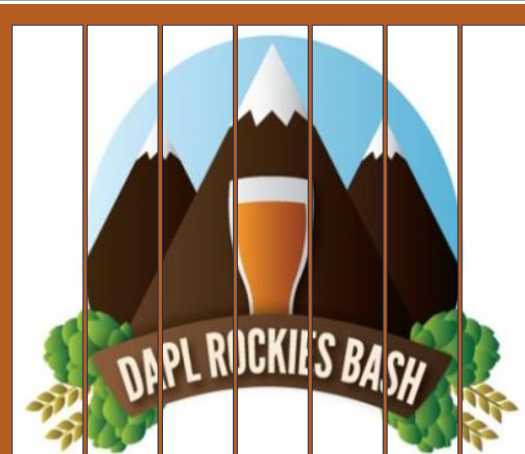
Field Landman Question cont'd.

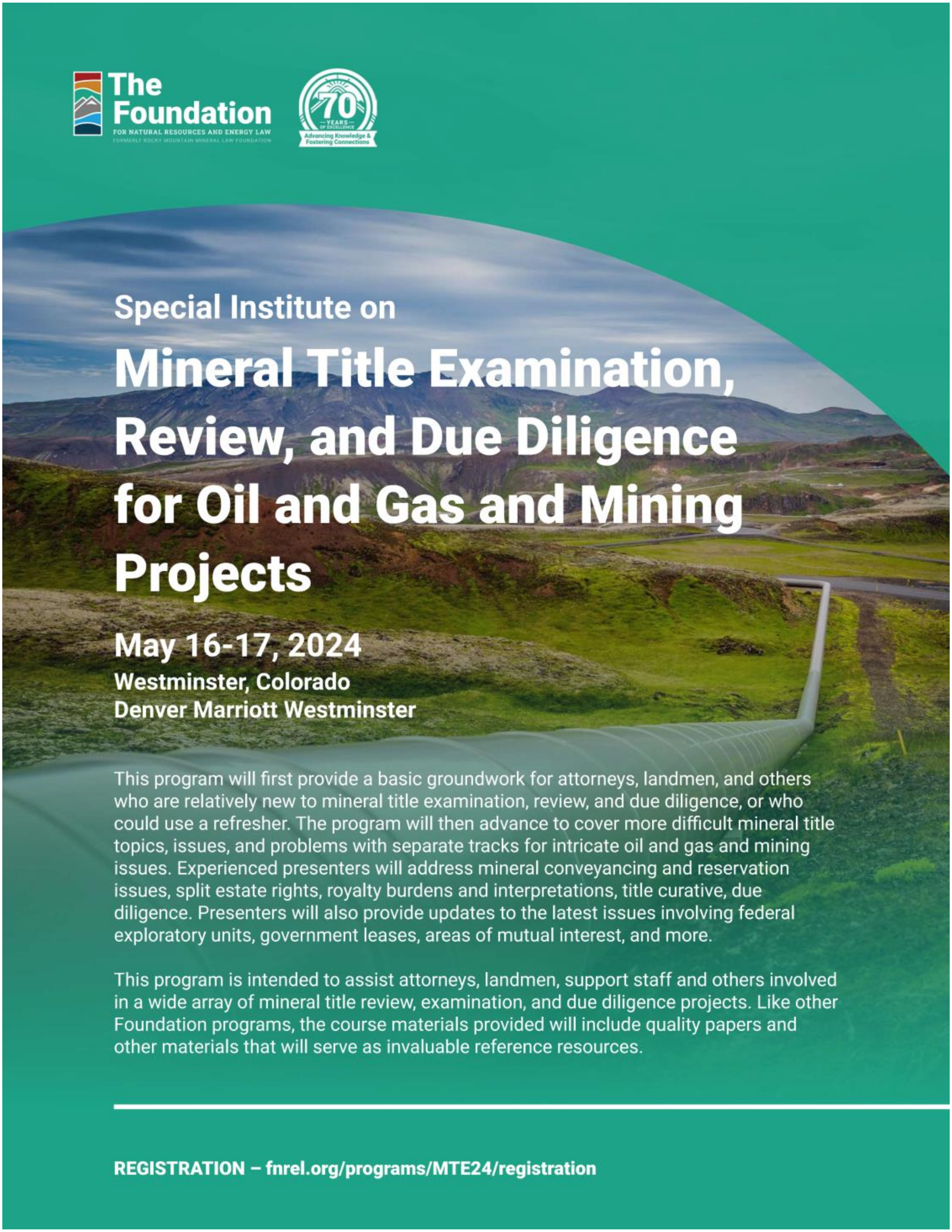
The other required element to establish marketable title under North Dakota's MTA is that the owner claiming particular property or interest must actually be in possession of that property or interest for the statutory period. Such possession should be evidenced by a recorded affidavit of the owner. In a notable cross-reference back to North Dakota's DMA, North Dakota's MTA provides, in N.D.C.C. § 47-19.1-07, that the "holder of an interest in severed minerals is deemed in possession of the minerals if that person has used the minerals as defined in § 47-19.1-07 and the use is stated in the affidavit of possession provided for in this section."

In sum, while there are some similar concepts at play in DMAs and MTAs, these are fundamentally different statutes in many ways. That said, to end on an overarching similarity between DMAs and MTAs – which is significant in parts of North Dakota and is commonly true of these laws across the country – N.D.C.C. § 38-18.1-08 and § 47-19.1-11 will never extinguish a claim or interest in any property owned by local, state, or federal governments.

Jim Tartaglia
Member, Steptoe & Johnson PLLC

Do you have a land issue you would like discussed? Do you need supporting documentation to win a bet with a colleague? Is there a question you are too embarrassed to ask your boss? If so, the DAPL would like to hear from you! Please submit your question to joe.martin@highwestresources.com. Each month, we will publish a question chosen from those submitted, along with a Steptoe & Johnson PLLC attorney's discussion of the issue. The foregoing article discusses general legal principles and laws applied to a generic fact situation, is not intended to constitute legal advice or create any attorney-client relationship, and no representation or warranty of accuracy or applicability regarding the same is made by the author or Steptoe & Johnson PLLC. The content of and views expressed in the foregoing article are those of the author, and are not the views of the DAPL.

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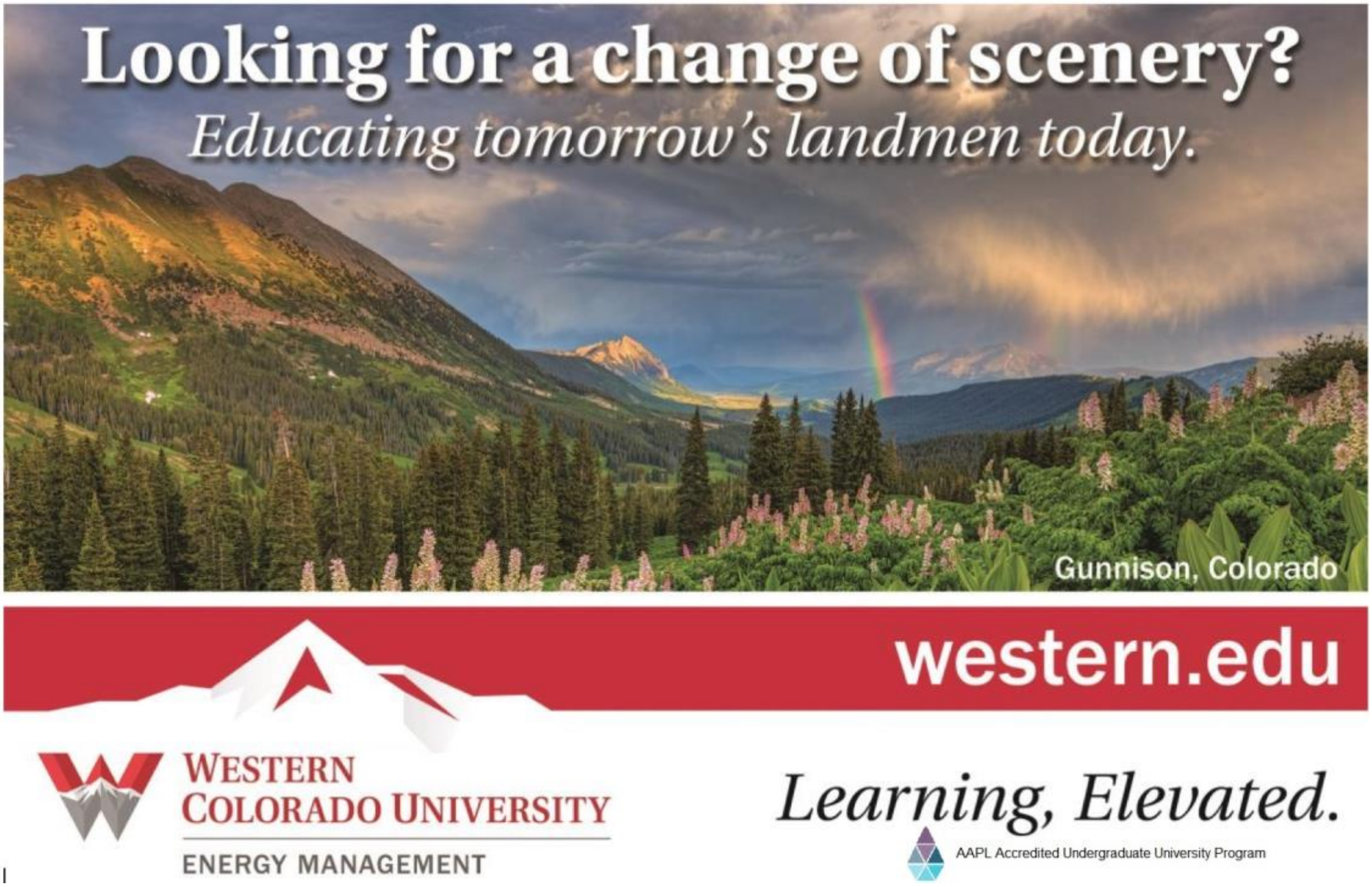
This program will first provide a basic groundwork for attorneys, landmen, and others who are relatively new to mineral title examination, review, and due diligence, or who could use a refresher. The program will then advance to cover more difficult mineral title topics, issues, and problems with separate tracks for intricate oil and gas and mining issues. Experienced presenters will address mineral conveyancing and reservation issues, split estate rights, royalty burdens and interpretations, title curative, due diligence. Presenters will also provide updates to the latest issues involving federal exploratory units, government leases, areas of mutual interest, and more.
This program is intended to assist attorneys, landmen, support staff and others involved in a wide array of mineral title review, examination, and due diligence projects. Like other Foundation programs, the course materials provided will include quality papers and other materials that will serve as invaluable reference resources.
REGISTRATION – fnrel.org/programs/MTE24/registration



The Rocky Mountain Landman Advertising Rates

Size	Dimension (W x H)	1 Time Ea.	10 Times Ea.
Business Cards	2 1/2 x 1	$ 25.00	$ 20.00
1/4 Column	2 3/8 x 2 1/4	$ 40.00	$ 36.00
1/2 Column	2 3/8 x 4 1/2	$ 65.00	$ 58.50
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