



UNIVERSITY of  
DENVER

DANIELS COLLEGE OF BUSINESS  
Franklin L. Burns School of Real  
Estate & Construction Management

## ADVANCED ENERGY LAND MANAGEMENT CERTIFICATE (AdvELM) CLASS DESCRIPTIONS

TO BE OFFERED AGAIN IN 2018

### **ADVANCED CONTRACTS: AMIs AND FARMOUT AGREEMENTS**

This class provides detailed coverage of the Area of Mutual Interest (AMI) agreement including how and why it is used. Topics covered include: What is the purpose of and what advantage is to be gained from being a party to an AMI?, What is the size of the AMI and how is it Described?, *Does the description of the lands burdened satisfy the statute of frauds?*, What is the Term of the Area of Mutual Interest; Can the Area of Mutual Interest be terminated?, What Persons are Bound by and Entitled to Rights under the Area of Mutual Interest?, What are the Notice and Exercise Procedures under the Area of Mutual Interest Agreement?, What is the result if a party acquires a property or properties that cover lands both inside and outside the boundary of an Area of Mutual Interest?, Are There any Restrictions on the Rights of a Party to Dispose of all or any Part of Its Interest in the Area of Mutual Interest Lands or Interests? What Does the Area of Mutual Interest Agreement Provide for If There is a Disagreement Concerning the Construction, Application or Breach of the Area of Mutual Interest Agreement? Selected, more challenging topics dealing with Farmouts and their relationship to the AMI are included.

### **ADVANCED ISSUES / SURFACE USE, DAMAGES & USE AGREEMENTS FOR PRIVATE LAND**

This class focuses on surface use issues relevant to private lands insofar as the issues should be considered when entering into surface use agreements and leases. Relationships are impacted by the drilling of horizontal laterals for many geological formations. The impact of horizontal drilling on surface damages and use issues is included. The question of reasonable use is answered on a case-by-case basis by employing such concepts as "due regard to the rights of the surface owner," "accommodations of rights," and "alternative methods of production;" however, these concepts are utilized without regularity or clear definition. Increasingly, a separate comprehensive legal document is necessary to address complex circumstances or conflicting surface uses. Modifications to the lease addressing surface use are becoming more common as are surface use agreements with the surface owner or user. Particular attention is paid to state statutes dealing with surface use and damages and how these statutes are changing the expectations and obligations of the parties. Participants will examine various surface use agreements and lease modifications related to surface use in the context of surface use statutes and related cases.

### **ADVANCED DUE DILIGENCE**

This class provides perspective on due diligence from the lender and investor perspective. We contrast more challenging issues facing merger and acquisitions for the oil business along with deal alternatives. We also consider, for the purposes of asset acquisitions, more challenging issues related to titles, leases and contracts. For example, when reviewing Farmouts and Joint Operating Agreements. Pugh, "Mother Hubbard," continuous drilling clauses, no-surface use, and other challenging issues related to leasing are what really are defects and how can they be valued, corrected or accepted through the use of deal terms. An important consideration is keeping leases alive in an age of horizontal drilling. We address how to do that and what to look for in the due diligence engagement and also what to do about more complex title issues and more challenging issues relating to Farmouts and modifications to leases and JOAs for horizontal drilling. The focus is on negotiating and drafting the Purchase and Sale Agreement and closing the deal when more challenging problems are involved.

**ADVANCED CONCEPTS IN MINERAL TITLE CONVEYANCING & CURATIVE** This class is excellent for students who want to better understand more complex issues related to mineral title conveyancing, curative requirements and methods. Students will better understand more complicated concepts in using and interpreting title opinions and engaging in title curative and due diligence. Students will be able to demonstrate competencies related to understanding and applying the following concepts: Typical Fee Title Defects, Related Requirements, and Curative Measures such as: Patent Reservations Which Do Not Appear in the County Records, Execution of Instruments by individuals, corporations, Joint Ventures, General and Limited Partnerships, Attorneys-in-Fact, Trade Names, and Public Entities. They will better understand more challenging Curative Measures or Validating Acts, Defective Acknowledgments, Un-administered Estates, Tax Sales and Foreclosures, Attempted Testamentary Disposition, Expired Oil and Gas Leases, Mortgages Superior to Oil and Gas Lease, the importance of Possession. Alternatives to Preferred Curative Measures and practical means of determining business risk and making decisions regarding whether to waive title requirements. The “double fraction problem,” “doctrine of “after acquired title” and exceptions to the “Duhig Rule” are examples of more challenging title issues included.

### **ADVANCED CONCEPTS FOR STRUCTURING EXPLORATION DEALS**

The objective is to assess the various contracts used in making exploration deals and present the tax and financial advantages and pitfalls of alternative deals. We will evaluate deal alternatives using techniques such as net present value, internal rate of return, payback, discounted payback, ROI, profitability index, MIRR, and expected value analysis of the more difficult aspects of contracts with special emphasis on tax and economic implications of alternative deals. Included are more complex issues related to the use of tax as a key determinant in enhancing and closing the deal. We cover tax partnerships, the “Pool of Capital” doctrine, lease acquisition costs and depletion, equipment costs and investment tax credit, intangible drilling and development/completion costs, tangible completion expenses, depletion and depletion allowance, the impact of percentage depletion and delay rental capitalization rates and the alternative minimum tax. Particular attention is paid to the interrelationships of the Participation Agreement, or Joint Venture Agreement, and other agreements such as AMIs, Farmouts and JOAs as well as “carried interests.”

### **ADVANCED CONTRACTS: SPECIAL ISSUES FOR PARTICIPATION AND OPERATING AGREEMENTS**

This class covers Participation Agreements and how they can be more effective for more extensive operations. Avoiding problems associated with overlapping AMIs and JOAs and effective decision making regarding such issues as the size and choice of the prospect area, whether to use one or more JOAs, the size and duration of the Participation Agreement, Notices, Choosing or not choosing to participate and other more challenging issues are addressed. We also focus on how joint operating agreements and other contracts govern operations after the first producing test well is completed. Consideration is given to what is not covered by the JOA, e.g. limitations on well proposals, dispute resolution, standards of contact for the operator, fiduciary status, notice regarding delay rentals, shut-in payments and minimum royalties, agency, independent contractor and acting in good faith issues, non-consent provisions, non-payment issues, the effect of lease provisions, surface use issues, farmouts, and changes in unit size. Also included is coverage of more common JOA modifications including those necessary for horizontal drilling.

### **ADVANCED ISSUES RELATED TO WATER WITH OIL & GAS DEVELOPMENT**

Water is so important to the development of oil and gas and students must understand future scenarios for the water law systems concerning acquiring water for the oil & gas plays. The growing concerns about the water resource arise from three rapid developments related to oil and gas: (1) tight shale gas production; (2) coal bed methane (CMB) production; and (3) corn-based ethanol production. These three developments are important because they involve an immense amount of water at a time when the interest in conserving water is growing substantially. Because various chemicals may be mixed with the water to create fracturing fluid, increased fracturing also raises concerns about migration of the fluid during fracturing and the disposal of the waste water after fracturing. Students will understand practical solutions to these issues and various ways to address limitations on water use, including restrictions on use, alternative sources, disposal of water and the role of such matters in negotiating leases and surface use agreements and damages.

## **ADVANCED CONCEPTS IN TAXATION & ENERGY FINANCE**

Because of the divergence of interests between oil and gas producers and financing institutions and the limited capital available in the market today, more creativity and flexibility are valued. Traditional lending may not be available and resorting to other methods may be the key to survival and growth. In this class students will examine the process of “going public” and all that requires compared with Regulation D securities offerings, volumetric production payments, net profits interests, and equity kickers, royalty trusts, attracting tax-exempt investors and the growing use of Islamic finance as we compare some of these less traditional financing methods with more traditional energy lending. More advanced oil and gas tax issues and sources of exotic financing choices are included.

## **ADVANCED REGULATORY AND POOLING & UNITIZATION ISSUES**

Regulatory matters are key concerns and the law can vary from state to state. In this class, we cover various federal and state regulatory requirements and learn more about the role of the various regulatory commissions. Special emphasis is placed on pooling and unitization and how some of the historical approaches have changed due to the increased use of horizontal drilling. Forced vs. Voluntary Pooling is evaluated along with the duty to pool in good faith. Students will understand the impact of both pooling and unitization on important lease clauses and the calculation of burdens.

## **ADVANCED STRUCTURING OF TRANSACTIONS TO MINIMIZE ENVIRONMENTAL LIABILITY**

Environmental issues are a very important concern in oil and gas development and a critical component for due diligence work. This class covers environmental laws that rely upon liability instead of regulation to achieve environmental goals and create the risk of financial loss. For example, CERCLA attempts to mitigate environmental problems by imposing liability on certain groups to “fix” an environmental problem and this can be a technically challenging and economically devastating proposition. Those who are unfortunate enough to achieve the status of “owner” or “operator” of a contaminated property can become liable for its cleanup even though that party did not cause or contribute to the problem. The situation is aggravated by the imposition of liability based upon status instead of fault, contribution, or causation. Possible solutions to such issues are explored including various risk management solutions, including the use of indemnification, hold harmless provisions, insurance and bonds.