

Chapter 15

Understanding Unconventional Easements and Rights of Entry

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A typical mineral operation involves multiple stakeholders, including mineral owners, surface owners and mine operators. Each has unique goals and concerns, and each has different (and often overlapping) rights to use the real property overlying the minerals. As a result, there is significant potential for confusion and disagreement regarding the existence, nature and scope of those rights, particularly where the mineral estate was severed from the surface estate long ago, the properties have changed hands repeatedly since severance, or the property has not been mined in many years. Often, any opportunity to clearly specify the various rights of the original parties has long since passed, and their successors may need to rely on the law of easements as a “last resort” to obtain or clarify their respective rights.¹

¹ See O. Judson Scheaf, “Easement Basics: A Primer on Easements in Oil and Gas Exploration and Production,” 16 *E. Min. L. Inst.* 3.05 (1993) [hereinafter Scheaf, *Easement Basics*] (describing the easement by prescription as a “last resort.”).