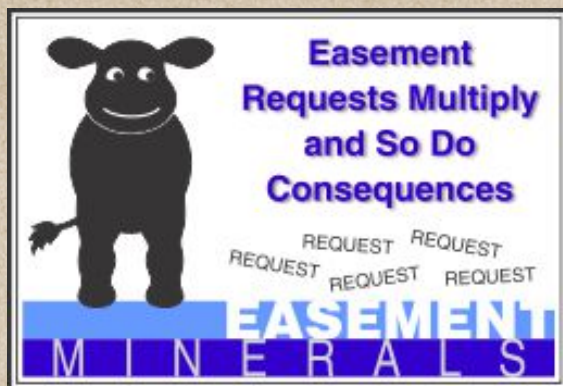




BeefTalk 726: May I Borrow Your Land?

SUPPORTING MATERIALS



What may seem a relatively small clause at the time of signing could mushroom into a major, if not unmanageable, fiscal request at some unknown future date for some future owner of the property.

The beef industry is a land-based business, and along with land comes an interesting relationship. The Dickinson Research Extension Center is in a very aggressive energy industry.

Perhaps the word “aggressive” is too harsh, but there certainly is an interesting relationship that is created when the person who owns or leases the surface of the land meets the person who owns the other side of the coin, which is known as subsurface or mineral rights.



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This relationship is hard to describe and often not appreciated by those who don't routinely deal with land issues. Simply put, if you lease or own your home, you enjoy living in the home and associated yard space. Realizing you may not own the subsurface probably is not something one dwells on until your enjoyment conflicts with the intentions of whoever owns the subsurface rights.

Just a thought, but what if the other owner decides to access those below-ground spaces by arriving one day and placing the entrance to the below-surface area in your front yard? Suddenly, one comes face to face with the complexity of dual ownership.

At the center, this is a very real scenario. Not being able to deny the second owner or leaseholder access to minerals means life starts to change. The change is small to start because it is primarily the process of accepting the pending change.

The first knock at the door is the easement process, which is the process of slowly and diligently spelling out surface access to the below-surface space. This process, although often presented with some impression of urgency, is really a time to ponder and prepare for upcoming surface changes and how they will impact the operational function of a farm or ranch, as well as impacts on living space.

At the center, various easements have taken from 30 days to more than a year to prepare, negotiate and finalize. The

steps are numerous, as are the parties who are involved, so coming to understand the intent of each statement is critical.

What are the real consequences? Signing papers can have consequences for a very long time. In fact, the week started with a forwarded email request to the center from the Burlington Northern Santa Fe Railway regarding pipelines that were contracted in 1937. BNSF needs the pipeline moved within 30 days. The parties who signed the contract in 1937 did agree that the railroad would, indeed, have the right to direct needed changes.

Those people who sat around the table in 1937 signed a document that still has impacts in 2014. It is amazing. How many farmers and ranchers remember what great-grandpa and -grandma agreed to do? What is even more amazing is how loosely worded the agreements seem to be and how they are sometimes slightly one-sided. Time is needed to ask the meaning of some particular words that are in any contract or easement. These easements often are undertaken too quickly, even though they are binding on current and future farm and ranch residents on that property.

Ultimately, within this balance is the concept of value. Two owners or leasers sit beside one another and contemplate what value each one will gain or lose. The value often is arbitrary, but it is set on the loss of surface value and income potential based on the current market and then projected for the life of the easement.

Although the upfront dollars may seem satisfactory, the contract or easement may not adequately account for future projections. The potential value of five acres of land, and lost current and future income potential, plus interest, all need to be considered. In addition, limitations that are put on the land at the time of signing may not seem like much today, but when one's grandchild wants to build a new fence, an easement or contract may put the financial burden back on the surface owner at a later date if those plans conflict with the easement wording.

Just as in the railway company contract, what may seem a relatively small clause at the time of signing could mushroom into a major, if not unmanageable, fiscal request at some unknown future date for some future owner of the property.

What is unique today, in contrast to previous times, is the magnitude and number of easement requests to open various portals to the underworld that exists under all of us. The individual easement may not seem like much, and a slight offering of money to offset a temporary inconvenience may seem adequate. However, beware because easement requests multiply and so do the consequences.

May you find all your ear tags.

Your comments are always welcome at <http://www.BeefTalk.com>. For more information, contact the NDBCIA Office, 1041 State Ave., Dickinson, ND 58601, or go to <http://www.CHAPS2000.com> on the Internet.

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