Memorandum
December 7, 2012

From: National Association of Royalty Owners - Rockies Chapter exclusively serving the State of Colorado

To: Mike King Director, Colorado Department of Natural Resources.

One of the most basic, fundamental real property ownership principals in our State is the right to own and develop the mineral estate. Sometimes separately from the surface. As the Colorado Supreme Court explained not that long ago: We have long recognized that a conveyance which severs a mineral interest from the surface estate creates a separate and distinct estate. Owners of a severed interest, ***whether minerals or surface,*** are therefore free to separately convey their interests.

These are ***very valuable*** *assets. Not just to the operator but to the myriad of different owners.*

The Colorado Mineral owner relies on the the State to provide a regulatory framework that allows for the **Responsible** development of this real **property right**. This framework has evolved and developed through the years – since 1915 when the first Gas Commission was established. The COGCC along with local governments oversee every phase of the mineral estate development.

But the regulators still recognize and respect the fact mineral ownership is a property right. A mineral owner in Colorado grants by a contract – a lease - the right to explore his minerals to a company the owner believes capable of producing them. Not all that different from contracting to build a house.

Once the regulatory framework is in place – and it is extensive – the State has taken the position it does not interfere with or make the contracts for the mineral owner. And rightly so, it's not the government's job to decide who an owner contracts with to develop his minerals – or build his home.

Mineral and Royalty interest owners comprise a diverse cohort. They are the Federal Government, large corporations, investment funds, banks, trusts, family trusts, educational institutions, non profits, pass through entities like Sub S corps, family llc's, State Land Board, Ranchers, Farmers, private investors, State Legislators, and private citizens.

If you were able to have the Department of Revenue produce a list of the 14000+ severance tax accounts I think you would be amazed at who they are. These entities and individuals recognize and understand the need for **REASONABLE** regulation for the development of their minerals. But, if each of these 14000 entities could speak to the issues of allowing their neighbor – **individually** – to dictate the use and development of their property rights I believe the response would mirror that of NARO's

membership and that is NO. I think the answer would be the same if surface owners were asked to discuss how their home will be built, and get approval from their neighbor, who owns the **mineral estate** next door.

Oklahoma University did a state by state study in which they attempted to determine how many citizens are in chain of title to mineral ownership. The number they came up with in Colorado was in excess of 600,000. You have heard from Industry and advocates of the environment on these issues. But you have not heard from those that own the resource because the State has always respected their private property right ownership – and rightly so.

Granting adjacent landowners the right of consent to development, again already heavily regulated, will certainly impair those private property rights – and likely rises to the level of a regulatory taking. Who will be paying for this?

For some development issues even royalty and landowners do not have standing before the commission and do not have the right to consent. Where is the equanimity?

The potential for legal misadventure, and the promotion of one individual's property rights over another's is a compelling argument against such regulation. It will pit neighbor against neighbor, brother against brother, and citizen against the state. Imagine a situation where there is long standing animosity between neighbors and the mischief that such a regulation would produce. Imagine a Federal Lease in which the adjoining landowners obstruct. Imagine the damage to State revenues. Imagine the Courtrooms. Imagine the damage to case law, and to the Oil and Gas act.

The State will damage its citizens with regulations that affect the private property rights of its Mineral owners and royalty interest owners. The States duty is to promote its resources in way that is efficient and minimizes the waste of those resources.

We ask to that some practical consideration be given. All downhole operations are monitored by the Commission. Operators have responded well to the extensive environmental protections – often leading the way in environmental issues such as wildlife studies and water monitoring, because they recoginze the importance of these resources to our State. Moderate voices should prevail, those that recognize the benefit of the partnership and expertise industry can provide. Drilling a well takes generally no more than a couple of weeks – and it can be inconvenient, but the bulk of the activity can be completed in a relatively short period of time. Let's not impose additional restrictions that will bring a halt to all operations because of this inconvenience, or create a regime that will have far reaching unintended impacts on our long recognized and respected private property rights.

We believe that regulations such as this, especially the granting of consent to adjacent landowners is an unconstitutional delegation of the power of eminent domain.