Ag Lending: Water and Environmental Issues – Risks and Recommendations

Karen Neeley
Cox Smith, Austin

Rene Ruiz
Cox Smith, Austin

Matt Crowell
Cox Smith, San Antonio

Texas Banker Association

93rd Annual Agriculture & Rural Affairs Conference

Ag Lending: Water and Environmental Issues
Risks and Recommendations

Karen Neeley
Rene Ruiz
Matt Crowell
Cox Smith Matthews Incorporated

1. Outline of Water and Mineral Issues
2. Guidelines for an Environmental Risk Program
3. Unique and Hard-to-Value Assets (from Comptroller's Handbook)

COX | SMITH

Texas Banker Association

93rd Annual Agriculture and Rural Affairs Conference
April 3-5, 2013
Hyatt Regency Hotel, Austin, Texas

A. SURFACE WATER
1. Surface water is property of the State of Texas
2. A permit is required to appropriate State water
3. Purposes for which State water may be permitted
4. Exceptions from permitting requirements
5. Applications to appropriate available State water
6. Basis for granting permit applications
7. Preferences to new permits
8. Scope of permit right
9. Rights as between permit holders
10. Permit amendments
11. Applications for permit amendments

B. GROUNDWATER
1. Water percolating below the surface of the earth
2. The Rule of Capture
3. Groundwater is the private property of the surface owner
4. The Conservation Amendment
5. Groundwater Conservation Districts
6. Applications for groundwater permits
7. Desired Future Conditions
8. Scope of permit rights
9. Permit amendments
10. Permit exemptions
11. Transfer of groundwater out of District

C. OIL AND GAS
1. Mineral severances
2. Correlative rights/rule of capture
3. Mineral estate dominance
4. Types of mineral rights
5. Accommodation doctrine
6. Oil and gas lease issues
7. Surface use agreements and surface damages
8. Ownership of executive/leasing rights
9. Easement and infrastructure concerns

D. SURFACE & GROUNDWATER LENDING ISSUES
1. Existence of water right and permit
2. Good standing of permit
3. Need for permit amendment
4. Cancellation of permit for nonuse or abandonment
5. Government changes to permit amount or permit rules
6. Violations of permit or rules
7. Drought

E. OIL AND GAS LENDING ISSUES
1. Mineral title examination
2. Minerals in place versus produced minerals
3. Title diligence and unrecorded instruments
4. Assignments of production

Rene Ruiz – rruiz@coxsmith.com
Matt Crowell – mcrowell@coxsmith.com
Cox Smith Matthews, Incorporated – Not for distribution
4551783.1

GUIDELINES FOR AN ENVIRONMENTAL RISK PROGRAM

The potential adverse effect of environmental contamination on the value of real property and the potential for liability under various environmental laws are important factors in evaluating real estate transactions and making loans secured by real estate. Thus, institutions should maintain an environmental risk program in order to evaluate the potential adverse effect of environmental contamination on the value of real property and the potential environmental liability associated with the real property. As part of the institution's overall decision-making process, the environmental risk program should establish procedures for identifying and evaluating potential environmental concerns associated with lending practices and other actions relating to real property.

The board of directors should review and approve the program and designate a senior officer knowledgeable in environmental matters responsible for program implementation. The environmental risk program should be commensurate with the institution's operations. That is, institutions that have a heavier concentration of loans to higher risk industries or localities of known contamination may require a more elaborate and sophisticated environmental risk program than institutions that lend more to lower-risk industries or localities. For example, loans collaterized by 1- to 4-family residences normally have less exposure to environmental liability than loans to finance industrial properties.

ELEMENTS OF AN ENVIRONMENTAL RISK PROGRAM

The environmental risk program should provide for staff training, set environmental policy guidelines and procedures, require an environmental review or analysis during the application process, include loan documentation standards, and establish appropriate environmental risk assessment safeguards in loan workout situations and foreclosures.

Training
The environmental risk program should incorporate training sufficient to ensure that the environmental risk program is implemented and followed within the institution, and the appropriate personnel have the knowledge and experience to determine and evaluate potential environmental concerns that might affect the institution. Whenever the complexity of the environmental issue is beyond the expertise of the institution's staff, the institution should consult legal counsel, environmental consultants, or other qualified experts.

Policies
When appropriate, loan policies, manuals and written procedures should address environmental issues pertinent to the institution's specific lending activities. For example, the lending manual may identify the types of environmental risks associated with industries and real estate in the institution's trade area, provide guidelines for conducting an analysis of potential environmental liability, and describe procedures for the resolution of potential environmental concerns. Procedures for the resolution of environmental concerns might also be developed for credit monitoring, loan workout situations, and foreclosures.

Environmental Risk Analysis

Prior to making a loan, an initial environmental risk analysis needs to be conducted during the application process. An appropriate analysis may allow the institution to avoid loans that result in substantial losses or liability and provide the institution with information to minimize potential environmental liability on loans that are made. Much of the needed information may be gathered by the account officer when interviewing the loan applicant concerning his or her business activities. In addition, the loan application might be designed to request relevant environmental information, such as the present and past uses of the property and the occurrence of any contacts by Federal, state or local governmental agencies about environmental matters. It may be necessary for the loan officer or other representative of an institution to visit the site to evaluate whether there is obvious visual evidence of environmental concerns.

Structured Environmental Risk Assessment

Whenever the application, interview, or visitation indicates a possible environmental concern, a more detailed structured investigation by a qualified individual may be necessary. This assessment may include surveying prior owners of the property, researching past uses of the property, inspecting the site and contiguous parcels, and reviewing company records for past use or disposal of hazardous materials. A review of public records and contact with Federal and state environmental protection agencies may help determine whether the borrower has been cited for violations concerning environmental laws or if the property has been identified on Federal and state lists of real property with significant environmental contamination. The institution's policies and procedures should reflect adequate consideration of the Environmental Protection Agency's (EPA) "All Appropriate Inquiry Rule."

> EPA All Appropriate Inquiry Rule – In January 2002, the Congress amended the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to establish, among other things, additional protections from cleanup liability for a new owner of a property. The bona fide prospective purchaser provision establishes that a person may purchase property with the knowledge that the property is contaminated without being held potentially liable for the cleanup of contamination at the property. The new owner must meet certain statutory requirements to qualify as a bona fide prospective purchaser and, prior to the date of acquiring the property, undertake "all appropriate inquiries" into the prior ownership and uses of the property.
>
> In November 2005, the EPA promulgated its "Standards and Practices for All Appropriate Inquiries" final rule (EPA All Appropriate Inquiry Rule) which establishes the standards and practices that are necessary to meet the requirements for an "all appropriate inquiry" into the prior ownership and uses of a property. The All Appropriate Inquiry Rule will become effective on November 1, 2006.
>
> An environmental evaluation of the property that meets the standards and practices of the EPA All Appropriate Inquiry Rule will provide the borrower with added protection from CERCLA cleanup liability, provided the borrower meets the requirements to be a bona fide purchaser and other statutory requirements. This protection, however, is limited to CERCLA and does not apply to the Resource Compensation and Recovery Act (RCRA), including liability associated with underground storage tanks, and other Federal

environmental statutes, and, depending on state law, state environmental statutes. In addition, such an environmental evaluation may provide a more detailed assessment of the property than an evaluation that does not conform to the EPA All Appropriate Inquiry Rule.

As part of its environmental risk analysis of any particular extension of credit, a lender should evaluate whether it is appropriate or necessary to require the borrower to perform an environmental evaluation that meets the standards and practices of the EPA All Appropriate Inquiry Rule. This decision involves judgment and may be made on a case-by-case basis considering the risk characteristics of the transaction, the type of property, and the environmental information gained during an initial environmental risk analysis. If indications of environmental concern are known or discovered during the loan application process, an institution may decide to require the borrower to perform an environmental evaluation that meets the requirements of the EPA All Appropriate Inquiry Rule.

The decision to require the borrower to perform a property assessment that meets the requirements of the EPA All Appropriate Inquiry Rule should be made in the context of the institution's overall environmental risk program. An environmental risk program should be designed to ensure that the institution makes an informed judgment about potential environmental risk and considers such risks in its overall consideration of risks associated with the extension of credit. In addition, an institution's environmental risk program may be tailored to the lending practices of the institution. Thus, an institution should make its decision concerning when and under what circumstances to require a borrower to perform an environmental property assessment based on its own environmental risk program as tailored to the needs of the lending practices of the institution. Individuals involved in administering an institution's environmental risk program should become familiar with these statutory elements. One source for information concerning the EPA All Appropriate Rule is the EPA website at http://www.epa.gov/brownfields/regneg.htm.

Monitoring

The environmental risk assessment should continue during the life of the loan by monitoring the borrower and the real property collateral for potential environmental concerns. The institution should be aware of changes in the business activities of the borrower that result in a significant increased risk of environmental liability associated with the real property collateral. If there is a potential for environmental contamination to adversely affect the value of the collateral, the institution might exercise its rights under the loan to require the borrower to resolve the environmental condition and take those actions that are reasonably necessary to protect the value of the real property.

Loan Documentation

Loan documents should include language to safeguard the institution against potential environmental losses and liabilities. Such language might require that the borrower comply with environmental laws, disclose information about the environmental status of the real property collateral and grant the institution the right to acquire additional information about potential hazardous contamination by inspecting the collateral for environmental concerns. The loan documents might also provide that the institution has the right to call the loan, refuse to extend funds under a line of credit, or foreclose if the hazardous contamination is discovered in the real property collateral. The loan documents might also call for an indemnity of the institution by the borrower and guarantors for environmental liability associated with the real property collateral.

Involvement in the Borrower's Operations

Under CERCLA and many state environmental cleanup statutes, an institution may have an exemption from environmental liability as the holder of a security interest in real property collateral. In monitoring a loan for potential environmental concerns, and resolving those environmental situations as necessary, an institution should evaluate whether its actions may constitute "participating in the management" of the business located on the real property collateral within the meaning of CERCLA. If its actions are considered to be participation in the management, the institution may lose its exemption from liability under CERCLA or similar state statutes.

Foreclosure

A lender's exposure to environmental liability may increase significantly if it takes title to real property held as collateral. An institution should evaluate the potential costs and liability for environmental contamination in conjunction with an assessment of the value of the collateral in reaching a decision to take title to the property by foreclosure or other means. Based on the type of property involved, a lender should consider including as part of this evaluation of potential environmental costs and liability an assessment of the property that meets the requirements of the EPA All Appropriate Inquiry Rule.

SUPERVISORY POLICY

Examiners will review an institution's environmental risk program as part of the examination of its lending and investment activities. When analyzing individual credits, examiners will review the institution's compliance with its own environmental risk program. Failure to establish or comply with an appropriate environmental program will be criticized and corrective action required.

Farm and Ranch Management

There are special considerations when crops and livestock are being raised on real property. The bank fiduciary usually is responsible not only for the underlying property of the account administered but also for the farm's or ranch's production. If the bank fiduciary leases the land, it should ensure that the tenant is capable, experienced, and knowledgeable about the particular operation. The bank fiduciary should obtain summary financial information about the income and expenses related to the farm's or ranch's production. To understand and analyze a farm's or ranch's financial information, the bank fiduciary needs to be familiar with the cycle of production for the crop or livestock. For instance, crop share leases are common for certain types of crops with related expenses (seed, fertilizer, etc.) shared proportionately. Because crop insurance varies by geography and type of crop, a bank fiduciary is responsible for ensuring the most cost-effective insurance is in place. The bank fiduciary must also evaluate the potential benefits and limitations associated with government farm programs to assess the merits of participation.

The bank fiduciary also needs detailed reports to properly monitor production progress. Periodic farm management status reports should document the type of crops planted, when harvest is expected and projected, and actual yields. Harvested crops are often stored in grain elevators or other storage facilities until sold. The bank fiduciary should verify where the commodities are held through warehouse receipts and other documents. The bank fiduciary also needs to ensure that crops are protected from spoilage or loss.

Livestock need to be inspected periodically by the bank fiduciary or by the fiduciary's agent. The inspection should give a head count of the livestock by breed, sex, and age, with a market value. The inspection should include comments on the weight and general health of the animals and veterinary expenses. The inspection should provide information specific to the type of operation, including breeding, grazing, or feedlot operations. Inspections for grazing operations should include comments on the quality of the grassland and related factors.

The use of outside agricultural managers is common, and they should be carefully vetted. These outside managers should be familiar with the types of agriculture properties being managed as well as the local agricultural economy. A manager should not be hired simply because the manager has ties to the bank or his or her property is adjacent to the trust property. The bank should have documented criteria for the selection and assessment of the manager's performance.

Agricultural managers, either in the bank's asset management department or external professionals, may recommend the use of hedging strategies to protect future selling prices. Before hedging strategies are used, the bank fiduciary should determine whether the governing instrument or applicable law authorizes such strategies. Information about financial analysis, production cycles, hedging strategies, and other guidance on sound banking practices may be found in the "Agricultural Lending" booklet of the *Comptroller's Handbook*. Also see appendix D of this Unique and Hard to Value Asset booklet for a sample worksheet when reviewing farm and ranch property.

Commercial Real Estate Leases

Commercial real estate (CRE) leases may be held as a trust investment and is typically leased to generate income. A trust that holds CRE leases may target one or more of the five primary real estate sectors: office, retail, industrial, hospitality, and residential (multifamily and one- to four-family). CRE leases are commonly received in kind or deposited into the trust by a grantor. An adequate appraisal of the property should be in place to ensure the asset is properly valued.

Leased properties should be governed by detailed, formal leases that are reviewed by legal counsel. Leases should be reviewed to ensure that protective covenants are in place and that the rights and responsibilities of both the lessor and the lessee are detailed. Rights and responsibilities that should be addressed in any lease are insurance, taxes, maintenance, time of rent payment, rent escalation clauses, easements, and inspection rights. When selecting a tenant, a fiduciary should carefully evaluate relevant factors of a lease arrangement, such as the business type, how long the tenant has been a going concern, and history with other landlords. Such factors are necessary to protect rent values and the account's investment and to guard against possible complaints or litigation. Environmental considerations are also of great importance when selecting tenants. By-products of certain operations, such as gas stations, dry cleaners, and printers, can be detrimental to property values and may subject the account and, ultimately, the fiduciary, to environmental risk. See "Environmental Issues" discussed in the "Risk Controls" section earlier in this booklet.

Timber Interests

There are special considerations when timber is held in a trust. Like other types of unique assets, timber interests are typically transferred to the bank's trust department in kind at the initiation of a trust. Less frequently, timber interests may be purchased by a bank fiduciary, primarily at the direction of the grantor.

The bank trust department's timber interest records should describe the type of trees grown and the trees' intended use. The amount of funds generated from sales depends whether the timber is intended for paper production, building materials, or furniture. The trust manager with responsibility for this area should have a written plan for timber management. The timber management plan should include the timing of tree harvestings and planting replacements.

Because the growth cycle of commercial-grade trees is 20 to 30 years, the timing of harvesting should consider favorable prices, the client's tax situation, and specific account income needs. The manager should ensure that harvesting and preparation for replanting follow timber management practices that avoid environmental damage or that negatively affect future yields. The timber management plan may include provisions that address thinning the replanted forest after 10 to 15 years, as well as other strategies designed to improve growth. A bank fiduciary should require periodic status reports from the timber property manager to monitor conformance with the plan. These timber reports detail when trees are to be cut, document bids from potential purchasers, document to whom trees are sold and at what price. The governing instrument should state how the proceeds from the sale of timber are allocated between principal and income. Additional forest income may be derived from the sale of hunting leases on the land. If hunting is allowed, the bank fiduciary should either purchase a liability policy, or require documentation of coverage from those securing hunting rights on the property.

Mineral Interests

The term "mineral interest" refers to the rights to the oil, gas, and solid minerals in a property. There are many forms of mineral interest ownership, each of which gives the holder differing rights and liabilities. Consequently, mineral interests have varying levels of risk. In most cases, bank fiduciaries do not purchase mineral interests as investments. Instead, mineral interests are usually deposited as original assets of a trust or acquired at death of the grantor or testator. Proper management of mineral interests requires personnel with highly specialized expertise, experience, and industry contacts. Many trust departments seek outside professional assistance to ensure that these assets are properly administered. Banks with income-producing mineral interests need specialized accounting and control systems to manage them.

Bank fiduciaries must ensure that processes are in place to properly manage mineral interests. The most common types of mineral interests are royalty interests and working interests.

- **Royalty interest** (RI): Interest retained by the mineral interest holder when the property is leased. The RI receives a specified portion of mineral income without any of the development and operating costs (except for certain taxes).

- **Working interest** (WI): A working interest is an interest in which the account participates (shares) with the operator of the well or mine in the actual expenses of drilling, mining, or maintaining the property. This provides the account a greater share of the income remaining after deducting all RI. That share is substantially higher than the RI but also imposes a greater share of expenses and potential liability.

When dealing with mineral interests, the bank fiduciary must utilize management tools to initiate timely action and to track documentation. For example, there should be a process to ensure timely and accurate posting of royalty and other income checks received from well and mine operators. Documentation should coincide with the terms of the lease agreements signed by the asset owner (the trust) and the operating company (the oil or mining company). This documentation should specify the percentage of interest that the trust receives from the operating company based on the mine or well's production. Based on industry practice, the minimum royalty a lessor customarily receives is 12.5 percent (one-eighth) of every dollar's worth of oil or gas produced from the lessor's property. It is common to refer to ownership interests in terms of one-eighths. Mineral interest documentation should also include the frequency that income is to be paid as well as which parties receive what percentage of income.

The bank fiduciary may be responsible for negotiating mineral leases. The bank fiduciary should consider selling working interests where the costs of administration exceed the benefits of holding the assets. A trust department should have tickler systems to remind the fiduciary to review and ensure expenses are current such as taxes and insurance coverage. A bank fiduciary should maintain documentation to support proper administration. This documentation should include evidence of ownership, valuations, leases, income and expenses, and environmental issues.

Evidence of Ownership

Several documents may be used as evidence of ownership, including the governing instrument, division orders, and mineral deeds.

- Division orders prepared by the drilling or mining company detail a land owner's rights to production payments. The division orders include the fractional or decimal percentage of ownership in the mineral interest or production, and may contain details regarding expense payments. While the bank fiduciary typically uses the division order to check the calculation of income and expense payments, the fiduciary should first ensure that the ownership percentages and production shares are accurate.

- Mineral and royalty deeds convey ownership. Mineral deeds convey title to designated minerals on or under a specific surface property, usually in perpetuity. A royalty deed conveys an interest in royalty mineral interests, often for a stipulated period.

Mineral interests received in kind or deposited as original trust assets pass ownership from the grantor to the bank fiduciary through the governing instrument. The governing instrument should authorize the bank fiduciary to hold mineral rights and should describe the bank fiduciary's management powers. If the grantor specifically relieves the bank fiduciary of liability for holding mineral interests regardless of whether those interests generate income, the governing instrument should expressly include this language. Several state laws provide this exculpatory language as well. Upon accepting mineral interests, a bank fiduciary should contact the county tax assessor where the minerals are located and file an affidavit of ownership. This affidavit assists potential investors in locating the owner of the mineral interest.

Valuations

Engineering reports typically value minerals by estimating recoverable reserves, the life of the well or mineral-bearing property, and the future price of the minerals produced. The basic value of minerals depends on the cash flow that the mineral interests generate from production. Reliance on engineering reports is the most widely accepted method for determining the valuation of mineral interests. For evaluation purposes, an independent engineering firm must prepare acceptable engineering reports, which must include detailed analyses of mineral reserves. An engineering report must address the following three critical concerns:

- **Pricing:** Prices must be realistic and supported. The report should reflect consideration of both price inflation and cost inflation over the estimated life of the properties.
- **Discount factors:** Discount rates should reflect current market interest rates.
- **Timing:** Reports should be accurate and should represent the production of the mineral interest. In most instances, the report should not exceed 12 months. Significant price fluctuations or changes in interest rates may require adjustments to the valuation of the reserves to reflect current conditions. The critical factor in determining the adequacy of the timeliness of the report is change in market conditions.

A broad range of market factors may affect the value of mineral interests, including supply and demand for refined products and leasing activity both in the immediate area and globally. The type of valuation needed depends on how the asset is to be used. Formal valuations are typically performed by geologists or petroleum engineers and are very costly. Bank fiduciaries generally obtain engineering reports for estate tax purposes, or when large interests are purchased, sold, or used for collateral for borrowing. Bank fiduciaries may use an informal value of three-to-five years' historical production, along with an analysis of market factors. These less formal valuations may be used for risk assessments for small fractional interests or properties that the bank trust department management is familiar with, and before the sale of older, smaller interests. The bank's policy should set guidelines for when a certain valuation process may be used.

Mineral interests, such as depleting assets, are difficult to value because the price is based on the assets' continued availability at any given time. It has been industry practice to list each mineral property on the trust department's master asset listing at a nominal $1 value. While this valuation method may be simpler, it is not likely to reflect the significance of the assets being managed. Bank fiduciaries therefore should use caution when following this practice and need to ensure they have other valuation methods in place.

Technological advances may lead to an increase in production in wells that were once not economically viable. Because of this, it is industry practice to retain mineral interests, if the instrument authorizes retaining them without liability to the fiduciary.

Fiduciaries usually charge a set fee for minerals management rather than a percentage of market value. Minerals management fees should be based on the risks associated with the specific type of holding and the resources required to manage it. Banks should refer to OCC Asset Management Interpretation on Call Report Schedule RC-T – Mineral Properties (January 14, 2005), for more details regarding the use of multiples of annual revenues in the context valuations for Call Report filings. The document can be found at www.occ.gov/topics/capital-markets/asset-management/corporate-trust/memo-rc-t-mineral-properties.pdf.

Leases

The bank fiduciary is responsible for negotiating mineral leases. A lease is a legal document in which the holder of the mineral interests on a specified tract of land grants either specific individuals or companies the right to enter the property and to conduct a search for oil and gas. Leases address the terms of the arrangement and how revenue and the liability are portioned. Some terms may change depending on market factors. When negotiating a new lease, the fiduciary should try to obtain information about the terms of other recent leases on comparable mineral interests in the area from other operators.

When negotiating a new lease, the bank fiduciary should use a lease document prepared by legal counsel. If the bank fiduciary is using a standard lease drafted by the operator (lessee), at a minimum, bank legal counsel or counsel with expertise should review all lease documents before execution. Standardized lease forms provided by the lessee may not contain language needed to fully protect the interests of the fiduciary account and the bank fiduciary. Some common features found in leases include

- a provision for a fixed-term, often three years.
- an up-front cash bonus (paid on a per-acre basis) to the lessor (trust account) on signing.
- a provision within the terms of the lease that provides the lessee the option to either drill or pay "delay rentals." "Delay rentals" are payments by the operator to the lessor to extend the terms of the lease in the absence of production. (These payments are generally contractually required to hold the lease.)
- royalty provisions in the event the well starts producing.
- the total depth to which the lessee is allowed to drill without an increase in the percentage royalty payment.
- conflicts of interest language stating that the lessees are not related to the bank, its shareholders, directors, officers, or other interested parties.

While state laws vary, in oil-rich states like Texas and Oklahoma, an oil company with a minerals lease has the right to explore for minerals and is not required to obtain permission from the surface owner. The oil or gas company usually attempts, however, to obtain the surface owner's agreement to avoid legal issues later. Bank fiduciaries that own the surface where exploration is occurring should negotiate a "surface damage agreement" with the operator. The agreement not only sets out how the surface owner is compensated in case of property damage but also establishes parameters for ingress and egress to the land.

Managing Income and Expenses

The amount of income received from a producing property depends on several factors; including the fraction of the interest owned, lease terms, and the level of production. If the oil or gas well is established, with regular production expected from the well, the bank fiduciary may receive monthly royalty checks. Otherwise, companies sometimes aggregate small payments until they reach a reasonable amount, usually agreed upon in advance, or they may issue one annual check.

For working interests, the bank fiduciary may receive authorization for expenditures (AFE) from the operator (expenses for developing the interest), which the bank fiduciary must approve and return to the operator. Before approving an AFE, the bank fiduciary should be knowledgeable about the industry, the operations of the particular interest, and the operator to ensure that the expenses being approved are reasonable. The bank should have a system in place for allocating payments between principal and income.

Federal and state tax laws establish depletion allowances for tax purposes and an array of other taxation issues. Accounting for mineral depletion and allocation of payments between principal and income beneficiaries are usually established by state law.

The bank fiduciary should have a process for managing income and expenses associated with the extraction of mineral interests. The bank should obtain the information needed and have appropriate systems or processes in place to anticipate the timing and estimated amount of income payments. If a payment is not received or the amount is unusual, this should prompt further inquiry from the department. The bank fiduciary should also have good internal controls over income posting and check writing as with any other income producing property.

Environmental Issues

Working interests have the greatest potential liability. The bank fiduciary should ensure that any working interest lease requires that the operator maintain environmental liability insurance. If possible, the bank fiduciary should require annual documentation showing the bank fiduciary as an "additional insured." Maintaining environmental liability insurance mitigates the need to perform environmental assessments of the drilling or mining sites. Inspections of these types of properties are extremely important and may warrant inspections more frequently than annually.

Closely Held Businesses

A closely held business is one that is owned by a single or small number of persons. Closely held businesses may be organized in various legal forms, such as closely held corporations, partnerships, sole proprietorships, or limited liability companies. Below are some examples of closely held business structures.