

High Plains Economic District  
Southeast Wyoming Oil  
Exploration Seminar Series:  
Part II

Terms of Oil and Gas Lease and  
Surface Damage Agreement

# Disclaimer

- ▶ Nothing in this presentation constitutes legal advice. The information conveyed through this presentation is intended for informational purposes only.
- ▶ Consult with your attorney before making any legal decisions regarding any oil and gas lease or surface damage agreement.

# Oil and Gas Lease

- ▶ Lease / Deed Distinction
- ▶ Mineral Deed
  - Conveys mineral estate in fee simple absolute.
  - Conveys ownership of the mineral interest.
- ▶ Lease
  - Conveys mineral estate for the duration of an estate in fee simple defeasible.
  - Usually, conveys mineral interest for a period of years.
- ▶ Potential to lease and sell.

# Oil and Gas Lease

- ▶ What rights are granted under an oil and gas lease?
  - Leasehold interest – Working interest
    - ▶ Gives working interest holder (lessee) the right to search for, develop, and produce oil and gas.
    - ▶ Lessee may go upon land to search for, sever, and remove oil and gas.
    - ▶ Obligates lessee to pay for “costs of production.”
      - “Costs of Production” Wyo. Stat. § 30-5-304(a)(vi) “means all costs incurred for exploration, development, primary or enhanced recovery and abandonment operations including, but not limited to lease acquisition, drilling and completion, pumping or lifting, recycling, gathering, compressing, pressurizing, heater treating, dehydrating, separating, storing or transporting the oil to the storage tanks or the gas into the market pipeline.”

# Oil and Gas Lease

## ▶ Standard form of Lease

### ■ "Producer's 88"

- ▶ Similar terms; however, lease forms will vary depending upon O & G company.
- ▶ Attorney will typically attach exhibit to lease agreement.
- ▶ Lease may or may not be recorded.
  - Alternative to lease being recorded is memorandum of lease.

# Oil and Gas Lease

## ▶ Term of Lease

- Usually a term of years
  - ▶ Commonly, 2-5 years.
  - ▶ Option to extend lease for a term of years.
  - ▶ Lease held by production indefinitely.

## ▶ Consideration for lease

- Cash bonus
  - ▶ Usually based upon the number of net mineral acres leased.
- Cash bonus will vary depending upon location of acreage, other terms of lease, etc.
- Cash bonus may be paid by check or draft.

## ▶ Royalty

- Percentage (or share) of production.

# Oil and Gas Lease

## ▶ Granting Clause

- Grants lessee the right to search for, develop, and produce oil and gas from the leased premises.
- Validity of grant:
  - ▶ Identify the substances conveyed by the lease, lands covered by the lease, and size of the interest conveyed.
    - Substances may include: oil, gas and other minerals.

# Oil and Gas Lease

## ▶ Continuous Operations Clause

- Gives lessee an opportunity to extend lease as long as operations for oil and gas continue on the leased land.
  - ▶ Sample: "If, at the expiration of the primary term of this Lease, oil or gas is not being produced on the lease premises or on acreage pooled or unitized with the lands but Lessee is then engaged in drilling or reworking operations, then this Lease shall continue in force so long as operations are being continuously prosecuted on the leased premises or on acreage pooled or unitized with the lands; and operations shall be considered to be continuously prosecuted if not more than ninety (90) days shall elapse between the completion or abandonment of one well and the beginning of operations for the drilling of a subsequent well."
- Duration will vary.

# Oil and Gas Lease

## ▶ Shut-In Royalty Clause

- Substitutes payment of a shut-in royalty for actual production when there might not be market for oil and gas or if the well is capped pending connection to a pipeline.
- Limits period of time which lessor may be shut-in.
  - ▶ Time period may vary.
- Negotiate terms of shut-in rental.
- Generally pertains to natural gas.

# Oil and Gas Lease

## ► Pooling Clause

- Generally, the clause combines tracts (or fractional interests) to drill a single well for production on a drilling/spacing unit.
- Production from any part of the drilling/spacing unit is generally considered to be the equivalent of production from all parts of the drilling/spacing unit. A producing well in a drilling/spacing unit, (but not on leased acreage), holds that lease (absent a Pugh Clause).

# Oil and Gas Lease

## ▶ Pugh Clause

- Modifies pooling language within lease, providing that drilling operations on or production from a pooled drilling/spacing unit will not preserve entire lease.
- Prevents lessee from holding a large tract of acreage by production on a small part of the tract.
- Production from a pooled unit maintains the lease only as to the lands included in the unit.

# Oil and Gas Lease

- ▶ Other provisions of oil and gas lease
  - Warranty of title
    - ▶ Consequences
  - Assignment clause
    - ▶ Notification
  - Obligation to enter into mutually acceptable surface damage agreement.
    - ▶ Sometimes entered into contemporaneously with lease
    - ▶ other times entered into after execution of lease.
  - Use of Water and Water Wells
  - Examination of Production Records
  - Removal of equipment/machinery

# What happens if I Don't Sign an Oil and Gas Lease?

- ▶ Can drill
- ▶ Consenting or Non-Consenting
- ▶ Forego bonus
- ▶ Liability

# Entry Upon Surface

- ▶ Wyo. Stat. §§ 30-5-401 through 30-5-410
  - (Split Estate Act)
  - Attempts to resolve differences between surface owner and operator.
  - Oil and gas company has the right to enter land for non-surface disturbing activities reasonable and necessary to determine the feasibility and location of oil and gas operations. Operator must give notice.
  - However, for oil and gas operations, oil and gas company must comply with the statutory requirements provided under Wyo. Stat. § 30-5-402.
  - “Oil and Gas Operations” defined as surface disturbing activities associated with drilling, producing, and transporting oil and gas, including the full range of development activity from exploration through production and reclamation of the disturbed surface.” Wyo. Stat. § 30-5-104(iv).

## Wyo. Stat. §§ 30-5-401 through 30-5-410

### ▶ Wyo. Stat. § 30-5-402

- Prior to entry upon surface estate for oil and gas operations, oil and gas company must:
  - ▶ Provide notice to surface owner of proposed entry
    - Not less than 30 days; not more than 180 days before commencement of any oil and gas operations.
  - ▶ Enter into good faith negotiations with surface owner to reach surface use/damage agreement.
  - ▶ Enter surface use agreement which provides compensation to surface owner for surface damages.

# Wyo. Stat. §§ 30-5-401 through 30-5-410

## ► Notice to Surface Owner

- Not less than 30 days, not more than 180 days prior to commencement of operations.
- Date on which operations will begin.
- Location of proposed facilities, access roads, well pads, wells, pits, reservoirs, power lines, and other facilities.
- Contact information of oil and gas company.
- An offer to negotiate in good faith any change in the proposed plan.
- A copy of the Act.
- Notice requirements can be waived through private agreement.

## Wyo. Stat. §§ 30-5-401 through 30-5-410

- ▶ Enter into surface damage/use agreement.
- ▶ If no agreement is reached, oil and gas company will be required to give bond to Wyoming Oil and Gas Conservation Commission.
  - Bond not less than \$2,000 per well site.

# Surface Damage Agreement

- ▶ Issues to discuss when entering into surface damage agreement
  - Location of wells, roads, fences, pipelines, and other facilities.
    - ▶ Proximity to house, barn or other structures.
  - Who is responsible for road maintenance?
  - Implementation of cattle guards?
  - Compensation for well pads, roads, power lines, pipelines, other oil and gas facilities.

# Surface Damage Agreement

- ▶ Issues to discuss when entering into surface damage agreement, cont.
  - Locking gates
  - Reclamation
    - ▶ Standards/costs/seed type/mud pits
    - ▶ Timeline
  - Speed limits
  - Damage to cattle and/or crops
  - Use of water
  - Dust mitigation
  - Signage
  - Compensation for extraordinary damages

# Surface Damage Agreement

- ▶ When should the surface owner enter into a surface damage agreement?
  - Contemporaneously with lease?
  - After lease has been executed?