

ENCOURAGING RESPONSIBLE DEVELOPMENT TODAY ~ FOR TOMORROW

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## **TIPS FOR LANDOWNERS NEGOTIATING OIL AND GAS LEASES AND/OR SURFACE USE & DAMAGE AGREEMENTS**

1. Lawyer up! Choose an attorney that specializes in mineral development for land owners. Become familiar with the Wyoming Split Estate Law, which is based on the concept of mutual accommodation.
2. Don't be in a hurry. Talk in detail with your neighbors and others who have been in negotiations. Those who sign a mineral lease, surface use agreement, easement or right of way early are not usually the ones who get the best deal.
3. Get to know the phone numbers of the Bureau of Land Management, the Wyoming Oil and Gas Conservation Commission, The Wyoming Department of Environmental Quality, folks at the University of Wyoming. Stay fully engaged with your community. There is strength in numbers.
4. Remember, everything is on the table for negotiation – water, land and minerals. Do not lease your minerals or sign away any of your rights until you have negotiated protections for your surface and water rights. You should negotiate a surface use or damage agreement that protects your surface interests in conjunction with a mineral lease or the mineral lease should require negotiations of a surface use agreement before any drilling takes place.
5. Negotiate the royalty on fee minerals. Usually, folks get anywhere from 12.5% to 18%. Try to get an override on split estate minerals. You may not get this, but you never know until you ask. Ask for annual payments on any surface agreement, easement or right of way.
6. Put together a list of issues important to you before you sit down and negotiate.
7. Make sure your agreement addresses water quality, quantity, well locations, roads, powerlines, noise, use and storage of chemicals on your property and disclosure of those chemicals. Any increased costs to you due to the gas development. Make sure your water wells and reservoirs are registered with the appropriate state or local agency.

8. Require the company to gather monitoring and baseline data by a consultant of your choice prior to anything happening on your property or gather that data yourself. Know the water quality of your domestic well. Know the water quality of the water to be discharged, get a lab analysis of this water and then be specific about what you want done with the produced water to avoid damages on your property.
9. Photograph your land before and during development. Keep a record!
10. Establish damage standards as part of the agreement. For example, if your water well drops below a certain level or changes in quality occur, spell out in the agreement exactly what level or quality change constitutes damage. Include a damage indemnity or bond in your agreement.
11. Make sure everybody knows up front that if the drilling or development activity damages a water well or the land, the company is required to replace the well and/or repair or compensate you for the loss and damages.
12. Look carefully at the agreement to remove any broad language or rights granted to the company. A common one is the right to place a well, pit or compressor station on your property.
13. Know the land (legal descriptions) that is covered and exclude where your house or other important areas are located.
14. Detail what specifically constitutes a breach of the agreement and give a limited time to cure a breach – include a penalty for violation of the agreement. (Gates left open, fences cut, erosion, going off right of way.)
15. Make sure the company is required to pay taxes on improvements and removes equipment when done.
16. Be specific about reclamation and what reclamation should be done and when. Include reseeding and if you want complete authority to conduct and be paid for reclamation – be specific. Deal with noxious weeds. Try to get a right of first refusal for reseeding, fencing or anything else you would like to be paid for doing.
17. Last but not least, don't be afraid to speak out publicly if it becomes necessary. It has never hurt us to be forthright about the problems with mineral development.

**For more information, sample agreements or to contact other landowners with negotiating experience call or email the Powder River Basin Resource Council at (307) 672-5809 or [info@powderriverbasin.org](mailto:info@powderriverbasin.org).**