



## Caution's the drill

By Ken Stephens - The Hutchinson News - [kstephens@hutchnews.com](mailto:kstephens@hutchnews.com)

For months now, landmen have been knocking on doors and cold-calling property owners in Comanche, Barber and Harper counties, offering to lease land for oil and gas exploration for hundreds of dollars to sometimes more than \$1,000 an acre.

They've gradually extended their reach north, where they're perhaps offering record prices but still nowhere near what has been offered in the southern border counties, leaving bewildered owners who aren't sure whether to sign on the dotted line.

The best advice may be to resist the urge to sign - at least right away.

"You just have to be careful, and if you're taking the first offer, you're not being careful," said Jeff Kennedy, an oil and gas attorney with the Wichita law firm of Martin Pringle.

Spokesmen for the Kansas Attorney General's office and the Kansas Corporation Commission, which issues the permits for drilling oil and gas wells, said they don't offer advice to landowners on leasing questions. So here's some advice Kennedy and Gordon Stull, an oil and gas attorney from Pratt, offered on what to do, what to look for and what to expect.

### Talk to an oil and gas lawyer

"This is going to sound self-serving," said Kennedy, "but if you're starting to think about leasing your property for oil and gas development, if you don't have a background in it, you'd be well-advised to find someone to help you, someone who knows the business. It can be an accountant you've worked with who does oil and gas or an attorney."

Stull, who has helped negotiate some of the most lucrative leases this year, agreed and added that even if you think you understand the oil and gas industry and leasing from the decades of vertical drilling in Kansas, it's a whole new game now with horizontal drilling and the sheer number of speculators crawling over the state looking for leases.

"People thought they knew what they were doing, and they probably did," Stull said. "But under the new system, they probably don't."

"It's too different, and it's happening and changing too fast," he said.

### **Talk to your neighbors**

"Chances are that if someone is trying to lease a quarter section from you in Reno County, they're trying to lease other quarter sections in the area," Kennedy said. "Talk to your neighbors. You may find out there's a higher price to be had."

Stull said that in the past if you got an offer, it might be from one company only and you didn't have much of a negotiating position.

"Now multiple companies looking for leases create opportunities for competition," Stull said. "So communicate and cooperate with your neighbors. You may find they're doing something out of market. So we encourage groups to work together."

### **Get it in writing**

The offer should have a legal description of the land to be leased, a term of the lease, the signing bonus to be paid and a provision for royalty payments based on actual oil and gas production.

Then show it to your attorney.

Money will vary depending on location and proven reserves established by earlier vertical drilling.

"If you're in Reno County where there's no prior development, \$50 (an acre) is higher than anybody has ever paid for a bonus," Kennedy said. "But if you are in Harper County, that's a terrible price. But there are people there who have leased for that price before they knew what was going on."

The term of the lease also may vary, but Stull said the most common is a three-year initial term with an option for an additional two years with another payment equal to the original bonus payment.

Royalties also will vary, depending on the company leasing the ground and the prospects for production. A one-eighth royalty has been standard, but 3/16th is now the most common, Stull and Kennedy said. In some cases, companies have agreed to as much as one-fourth.

### **Insist on cash**

Kennedy and Stull said some speculators are offering a "sight draft," which is essentially a promise to pay the signing bonus later.

Sight drafts originated decades ago when communication between the landmen, their home office and banks moved at a much slower pace. The landmen would make an offer, with payment contingent upon everything checking out with the office and the bank.

Now, however, some speculators who don't have any money are trying to pick up leases and pay for them if and when they can resell the leases at a profit to an oil drilling company. If that doesn't happen, the landmen just walk away without honoring the deal, Kennedy and Stull said.

That's a bigger danger the farther away the land is from the counties where the drilling companies are active now.

"What you're seeing in Reno County are speculators and entrepreneurs," Kennedy said. "I don't think the companies that will ultimately do the development are leasing in Reno County."

If the landman is serious and really believes the land has potential, he'll pay cash, Kennedy said.

If the landman says he needs time for due diligence, tell him to go do it and come back with a cash offer when he's done, Stull said.

### **Current and future land use**

Depending on how you use your land or might want to use it in the future, Kennedy said, you might not want to lease it for oil and gas development.

Another thing to think about is wind energy. Some of the same rural areas targeted for oil and gas leasing also are prime locations for wind farms, Kennedy said, but the income potential from oil and gas far outweighs that from a wind farm today. However, he added, it's possible to construct wind or oil and gas leases that don't preclude the other type of energy development.

"Don't lock yourself into a position where you can't do both," he said.

Stull also said you need to make sure that the lease includes reasonable provisions to preserve your property and protect it from damage.

"The oil companies will make reasonable accommodations, but you need to ask," he said. "It has to be mutually satisfactory. You can't hamstring the operator to where he can't operate economically, but you don't want to give them carte blanche, either."

### **A place to start**

If you want to try to do some of your own research, a good place to start is the Kansas Geological Survey. Go to <http://maps.kgs.ku.edu/oilgas> for an interactive map of Kansas oil and gas exploration. You can zoom in on a county or a particular oil field. You can get summaries of how many wells there are and see their cumulative production year by year. You can even see where the active wells are, where dry holes were drilled and where wells have been plugged after they ceased to be productive.