Chapter III
Tips for Landowners

Oil and Gas at Your Door?

A Landowner's Guide to Oil and Gas Development
Second Edition

OIL & GAS ACCOUNTABILITY PROJECT

P.O. Box 1102 • Durango, Colorado USA 81301
Phone: 970-259-3353 Fax: 970-259-7514
www.ogap.org

Chapter III

Tips for Landowners

III

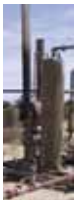
WHAT TO DO WHEN THE LANDMAN COMES CALLING
This section provides surface owners with suggestions on how to respond to the initial visits from oil and gas companies.

SURFACE USE AGREEMENTS
One of the tools available for protecting surface property and surface owner quality of life is the Surface Use Agreement. This section examines the pros and cons of negotiating these agreements, and provides samples of what others have been able to negotiate.

LEASING
The information in this section is geared toward those fortunate enough to own mineral rights. Mineral owners have the option of leasing or not leasing the minerals to oil and gas companies. If they choose to lease, there are some tips contained in this section to help ensure that the lease meets their needs and protects their interests.

OTHER ACTIVITIES LANDOWNERS MAY WANT TO CONSIDER
The final section of this chapter provides additional strategies and tools for surface owners confronted with oil and gas development. Some of these strategies include pushing for reform of oil and gas laws and regulations, taking companies to court, and working with other landowners to pressure companies and governments to carry out responsible oil and gas development.

What to do When the Landman Comes Calling



What is a landman?
A landman is the name given to a man or woman who serves as the company's contact person with the public who may be an employee or contractor with the oil or gas company. Some of the tasks that landmen perform include: researching courthouse records to determine mineral ownership; locating mineral/landowners and negotiating oil and gas leases and other agreements with them; and conducting surface inspections before drilling.[449]

What to do if contacted by a landman

1. When interest develops in your minerals, you may be approached by phone, mail, or in person. The landman or lease broker may determine your interest in leasing by quoting you an offer. You should write the offer down or get it in writing.
2. Do not sign or agree to anything (e.g., a lease or surface use agreement) without understanding the terms of the agreement or getting professional advice. You may want to contact an attorney or organizations that work with landowners. You may want to talk with your neighbors and others who have been in negotiations with oil or gas companies. It may be helpful for you to read through the landowner profiles that are scattered throughout this document. The lessons learned by others may help you to figure out your own strategy for dealing with oil and gas company representatives.

3. Stand your ground. Some landmen may use intimidation tactics or threats to pressure you into signing an agreement. For more information on intimidation tactics, see the story "Threats and Intimidation: This is Negotiation?" and also Peggy Hocutt's story, in Chapter IV.
4. Put together a list of issues important to you before you begin negotiating with the landman. Remember, everything except your name and the legal description of the property is negotiable.
5. At any meeting with a landman, document as much as you can. Take notes, or better yet, tape record your meetings. Or have someone else sit in as a witness.
6. Understand who it is you are dealing with. Research the oil or gas company's track record. Talk with neighbors and other landowners who have had to deal with the same company. Find out, if you can, details of agreements reached between the company and other surface owners (e.g., if they offered to test your neighbor's well water, they should do the same for you).
   - The Colorado Oil and Gas Conservation Commission (COGCC) maintains a database of incidents and complaints. You can look up information on a specific company, e.g., how many violations they have had, and how the company responded to complaints. Also, the database has information on inspections, notices of alleged violations, and spills. It can be found at the COGCC website, under "Database." (http://oil-gas.state.co.us/). There may be similar databases in other states. Contact your state agencies to find out.
7. Consider signing a lease or negotiating a Surface Use Agreement (both are discussed below). If you are going to sign a lease, consider negotiating the Surface Use Agreement either before or at the same time that you negotiate the lease.

Knowing Your Landman

You may want to ask your landman if he or she is a certified landman, and whether or not he or she belongs to any professional landmen associations, the largest one being the American Association of Professional Landmen (AAPL). Many of these associations have codes of ethics that landmen agree to follow. For example, the AAPL Code of Ethics state that:

> *The Land Professional, in his dealings with landowners, industry parties, and others outside the industry, shall conduct himself in a manner consistent with fairness and honesty, such as to maintain the respect of the public.*

If you believe that the land professional has used intimidation tactics, or has lied to you during the negotiations, you should call the landman's association and report the incident. For example, the AAPL has an Ethics Committee to which you may direct complaints. Their address is: American Association of Professional Landmen. Ethics Committee. 4100 Fossil Creek Blvd. Fort Worth, TX 76137. Phone: 817-847-7700.

Surface Use Agreements

Surface Use Agreements (SUA) are sometimes referred to as Surface Damage Agreements (SDA) or Surface Use and Damage Agreements (SUDA). They are all agreements negotiated by the surface owner and a company representative.

They may be negotiated with a company whether or not the surface owner owns the mineral rights. As mentioned in Chapter II, some states require a company to negotiate an agreement with a surface owner who does not also own the mineral rights. Whether or not there is a surface compensation law, many companies will approach landowners with pre-written SUAs that they hope will be signed on the spot.

Before You Negotiate a Surface Use Agreement

1. What are the potential drawbacks of signing an SUA?
    - According to an attorney who works with surface owners, when a surface use agreement is signed a landowner typically gives up his or her right to sue for trespass arising from unreasonable use of the surface. Also, in many cases, the amounts of money paid are so small and the written concessions are so minimal that a landowner might benefit from refusing to sign an SUA, and instead, retain his or right to sue for unreasonable behavior that occurs anytime during the lifetime of the lease. The theory behind this strategy is that the potential threat of suit will keep the oil or gas company on best behavior during the lifetime of the lease, which is a greater benefit than the pittance sometimes offered in "damages," and the minimal written concessions contained in most surface use agreements. Bear in mind, of course, that suing for trespass is an expensive endeavor and may not be feasible even if a landowner retains that right. It is, however, possible that simply filing a trespass suit may lead to improvements on the part of the oil and gas company, in their attempts to avoid the suit or reduce damages.
    - Be aware that if you do negotiate an SUA there may be unintended omissions (on your part) or items that the company will not put into the agreement. Because you have signed the agreement, you may be out of luck if problems arise that are not addressed in the agreement. Or again, you may have to go to court to resolve these issues.

      See Terry Fitzgerald's story for an explanation as to why she and her husband Jim refused to sign a surface use agreement.
2. What are the benefits of signing an SUA?
    - The main benefit of negotiating an SUA is that it provides you with a signed legal document outlining the issues you and the company have agreed upon. And both you and the company know that if the company does not live up to the agreement, you can take them to court; and if you win, they will likely have to pay your attorney fees.
    - You have the opportunity in negotiating SUAs to include issues that are important to you. For example, protection of certain areas of your property; getting the company to agree to upgrade your road or put in fences. If you don't negotiate an SUA, you may never realize many of these sorts of benefits.

If You Negotiate an SUA

- Take some time to review the examples of SUAs below, and suggestions on items to include. But do not feel limited by what you see. If there is something you want in the agreement, try to negotiate with the company to get that included.
- Negotiating SUAs allows you to establish a relationship with the company. Depending on the tone of the negotiations, your relationship may be a positive or negative experience.

This may affect the company's willingness to live up to the letter of the agreements, or to complete negotiations.

- The negotiation process could take up a fair amount of your time. According to one oil and gas industry representative, SUA negotiations can last more than a year, but the average is five months.[450]
- If you do not own your minerals and you are particular about how you'd like to see things done on your land, your attorney's fees could get quite high. For example, a Gillette, Wyoming landowner had $10,000 in attorney fees for negotiating the terms for a 24-inch pipeline (this cost was shared between four landowners). This property owner was particular about how he wanted development to occur on his property. Despite owning some of his minerals, as coalbed methane production got underway the landowner's monthly attorney's fees were $2,000 per month.[451]
- Taking the time to negotiate an SUA is only worth it if the company lives up to the agreement. (See Nancy and Robert Sorensen's story for an example of how a company failed to fulfill the terms of their SUA.) Moreover, oversight of oil and gas development activities and enforcement of SUA terms is extremely time consuming - for many landowners it may be equivalent to a full time job. This time is not compensated under the SUA. It is a loss of income for the landowner because the person overseeing a company's activities cannot do other work during those hours. (This, however, may be equally true for landowners who choose to not sign an SUA. See Terry Fitzgerald's story of her family's 20-plus years of dealing with the oil and gas industry.)
- The Powder River Basin Resource Council has a detailed checklist of items to consider when negotiating surface use and damage agreements.[452]

Powder River Basin Resource Council SUA Checklist

ACTIVITY OF CONCERN

Surveyors
1. When can they go?
2. How will they go?
3. How will they mark?
4. Who will pick up junk?
5. Will they get permission?
6. How much will be paid for access?

Seismic activities
1. Hole
2. Vibrosize
3. 3D
4. Types of damage: (a) Surface – soil compaction; destruction of plant life; junk; time of operations; (b) Water – drainage between formations; damage to existing wells or springs; who will pay?

Junk
1. Oil
2. Mechanical work in field
3. Survey and pin flags
4. Placement of signage
5. Duty to pick up trash

Operations in mud and snow

Water Protection
1. Drilling water
2. Disposal of water: (a) quality of water – heavy metals; salts; temperature; (b) volume of water – slope; (c) soil conditions; (d) protection of water resources (include federal and state laws to be considered)

Soil pollution

Noise pollution

Light pollution

Air pollution

Protection of viewscape

Protection of vegetative resource
1. Growing crops: (a) harvest time; (b) soil erosion; (c) turning expense
2. Grass
3. Fire: (a) vegetation; (b) timber; (c) structures; (d) livestock

Extraordinary loss
1. Livestock
2. Wildlife
3. Human

Cooperation with others as to roads and water storage

Drilling operations
1. Depth
2. Length to time of operations
3. Time of year of operations: (a) Size of pad; (b) Width of easements; (c) Location of drilling operations; (d) Location of road – fences; snow; type of construction; weight to be carried on road; crossing of road; grade and crown; soils (sandy; clays; expansive; compaction; erosion due to wind or water); culverts; gates; cattle guards; deviation from established roads.

Recreational uses
1. Guns bows and crossbows
2. Dogs
3. Drugs
4. Alcohol
5. Recreation vehicles: (a) four wheelers and motorcycles; (b) 4-wheel drives
6. Fishing
7. Hunting
8. Searching for artifacts: (a) paleological; (b) archeological

Reclamation
1. Protection of soil and vegetative resource
2. How graded
3. How long open
4. When seeded
5. What seeded
6. How seeded
7. Wildlife areas: (a) riparian areas; (b) duck islands; (c) fish
8. Noxious Weeds: (a) 21 introduced species - 1 native; (b) how spread; (c) control of

Parking of equipment off road

Access Points (Security and protection of hunting)

Time of operations
1. Time of year
2. Mud and snow
3. Time of day

Cooperation with other companies

Changes in location of roads; electric lines; wells

Dealing with Agencies
1. Federal BLM: (a) on-site inspection; (b) cultural surveys
2. State (e.g., Engineer, Department of Environmental Quality, Oil and Gas Commission, etc.)

Legal Concerns
1. ID of parties; addresses; phone #'s; tax ID
2. Legal descriptions
3. Notices
4. Force Majure: (a) choice of jurisdiction and venue; (b) release of liability and indemnification
5. Statutory law citation

DAMAGES	
Realities of Money 1. When payment is received: (a) before work commences; (b) after work; (c) split payments (some before, some after); (d) annually 2. How much: (a) cover risk; (b) real damages; (c) intangible damages; (d) value to buyer (market value) 3. What form: (a) check; (b) cash; (c) sight draft; (d) time draft 4. Who pays: (a) lessee; (b) contractor; (c) agent 5. Credit worthiness of payor 6. Well Sites: (a) initial damages; (b) annual damages 7. Deep well: (a) initial damages; (b) annual damages 8. Methane well: (a) initial damages; (b) annual damages 9. Strat well: (a) initial damages **Annual damages** **Pipelines** 1. Flowlines: (a) initial damages; (b) annual damages 2. Water Disposal Lines: (a) initial damages; (b) annual damages 3. Large 4" or greater oil lines: (a) initial damages; (b) annual damages 4. Large 4" or greater gas lines: (a) initial damages; (b) annual damages	**Compressor Stations** 1. Initial damages 2. Annual damages **Electrical lines Above the Ground** 1. Initial damages 2. Annual damages **Electrical Lines Below Ground** 1. Initial damages 2. Annual damages **Service access points** **Roads** 1. Permanent shaled: (a) initial damages; (b) annual damages 2. Permanent two track: (a) initial damages; (b) annual damages

Surface Use Agreement Provisions to Consider

Development plan

- Surface owners may want to require from the company an overall development plan showing the location of wells, roads, pipelines, compressors, water disposal/discharge, etc. before development starts, with allowance for changes as development progresses. (See Vermejo Park Mineral Extraction Agreement below for an example of this type of provision)

Water issues

- Address both water quality and quantity issues.
- Establish damage standards as part of the agreement. Spell out in the agreement how much of a change constitutes damage (e.g., if your water well drops below a certain level or water quality declines by a certain amount). Include remedies for what the company will do if damages occur (e.g., the company will pay for the successful drilling of a new drinking water well).
- Be clear from the opening discussion and put into the agreement that if drilling or other development activities damage a water well or the land, the company is required to replace the well and repair or compensate for the damages.
- Water well location (make sure your water wells are registered with the state engineer, so that you have proof of location).
- Require the company to gather baseline water quality and quantity data by a consultant of your choice PRIOR TO any activities on your property. Require the company to conduct periodic monitoring of water quality and quantity, to gauge whether the company's activities are having an effect on your water. Make sure water sampling includes quality and quantity of: domestic well water, surface waters, springs, and groundwater flows. And require the company to provide regular reports of the test results.
- Require that the company disclose the quality and quantity of the water from oil and gas

operations to be discharged or reinjected by the company. Ask for a lab analysis of the water (from an independent lab, if possible), and then be specific about where you want the water to be discharged or piped to avoid damages to your property. Also, retain the right to require the operator to move the point of discharge if it is causing environmental or biological damage (e.g., killing hay meadows, streamside vegetation, fish in the stream).

- Groundwater withdrawal from aquifers is an important issue for landowners who rely on groundwater for livestock and for irrigation. Some gas operators have cooperated with landowners by diverting produced water from CBM wells into stock tanks or other holding areas for their livestock.[453] Depending upon the quality of the produced water, this may be something to add into your SUA.

Land use issues

- Propose development alternatives that make sense in terms of your agricultural or land use operations. For example, don't be afraid to propose alternative routes or pump locations. Don't let them chop up your field with a road or pump that is better located elsewhere.
- You may want to include techniques for preventing/controlling erosion.
- Right-of-way easements. Some companies may try and get you to put this easement in their name. It is in your best interest to do this agreement with your power company, not the oil and gas company.[454]
- When leasing land for certain facilities, e.g., compressors, you will likely lease that land by the acre. You should be specific on the wording of this lease as to what materials are going to be on the acreage involved. If you are not specific, companies may take advantage of it and put as much hardware as they can on the acreage.[455]

Reclamation

- Be specific about reclamation and how it should be done (e.g., you want original land contours restored; and native vegetation planted). Include agreements on reseeding. If you so desire, require that you be authorized to conduct and be paid for carrying out the reclamation.
- Include whether or not you want the option to convert a gas well to a water well.
- You may want to include a clause stating that the company will remain responsible for closure and restoration of containment pits, regardless of whether the landowner uses the produced water they hold; as well as for clean up of any hazardous materials left in the bottom of the pits upon closure.

Rights and responsibilities of the company

- Look carefully at the agreement, and remove any broad language or rights granted to the company. For example, it is common for companies to include the right to place a gas plant on your property.
- Make sure the company is required to pay taxes on improvements (e.g., roads).
- Make sure company removes equipment when activities are completed.
- Include a damage indemnity or bond in the agreement. Most state agencies require companies to post a bond, but often these amounts are not sufficient to ensure that wells will be plugged and abandoned properly.

Benefits granted to the surface owner

- Some landowners have asked to be able to use parts of the well pad for parking vehicles, trailers or equipment.
- Site-specific surface enhancement issues may also be included (e.g., new fences, new gates/cattle guards).

INDEMNIFICATION

Landowners should be sure to request an indemnification clause so that they will not be held responsible for pollution or other long-term liabilities created by the oil or gas company. For more information, see number 33 of the Sample Surface Use Agreement later in the chapter.

Quality of life, health and safety issues

- Often, oil and gas companies spray pesticides to keep weeds down along roadsides. If this is not something you want on your land, be sure to specify this in the agreement.
- Include provisions that protect and preserve aesthetic values (e.g., hide compressors behind hills, reduce and consolidate the number of above-ground power lines, maximize use of buried power lines).
- If noise reduction from pumps and compressor stations is a concern, require the use noise reducing equipment and materials.

General

- Detail what specifically constitutes a breech of the agreement, and give 30 days to cure the breech.

Enforceability of the agreement

This has definitely been a problem for landowners. Even when landowners have had good experiences with oil or gas development on their property, non-compliance with surface use agreements is commonplace. Surface owners have had to resort to legal action when companies have failed to comply with the agreement, even though it contained protective provisions. Some landowners have made suggestions for surface use agreement breach of contract provisions that might make the agreement easier to enforce,[456] including:

- penalty clauses or stipulated damage provisions for violations of the agreement (e.g., $300/day while a pit is leaking);
- operator payment of the landowner's attorney fees if the landowner prevails in a suit to enforce the agreement; and
- escrow account or other financial guarantee to be created by the initial operator, which can be drawn against to correct violations of the agreement that are not cured within a reasonable amount of time.

Industry Perspectives on SUAs

In 2003, interviews were conducted with a number of coalbed methane companies on the topic of what should be included in surface use agreements. Here are some of the findings:[457]

- Some companies said that surface use agreements should address all foreseeable issues up-front, so that both operator and landowner know what to expect as development progresses. These operators also believed there was a benefit to having the same agreement across a number of wells, ensuring that requirements are consistent.
- Some companies resist making commitments on location of wells and supporting infrastructure during the exploratory phase of development, fearing that this could limit the ability to locate additional future wells that may be needed to maximize production in certain areas.
- Some companies prefer to postpone negotiation of a water management agreement until more information is available on the quality and quantity of produced water, especially in an exploratory situation. One company negotiates all things up front, so that it does not spend capital to drill wells only to be "held hostage" by the landowner regarding produced water disposal issues.
- Company representatives described various approaches to the monetary reimbursement component of an agreement. Some had a fixed, non-negotiable price that they offered for each aspect of the development, and if a landowner attempted to discuss a different reimbursement schedule that signaled the end of "good-faith" negotiations from the company's perspective. Others showed more willingness to integrate the damage reimbursement provisions with operational details to address the individual landowners' use of the property. Some companies were willing to consider alternatives to strict damage reimburse-

ment payments. For example, they might be willing to pay a percentage overriding royalty to split estate owners, if it were in lieu of surface damage payments.

- Some companies recognized that the actual implementation of the surface use agreement was a potential area of conflict. Some felt that giving the landowner a single, local point of contact for the agreement would be good. Others did not necessarily provide for this in the agreement, yet said that they believed that landowners prefer companies who have a local office or point of contact. Some company representatives also stated that more authority should be given to local company staff to resolve disputes.

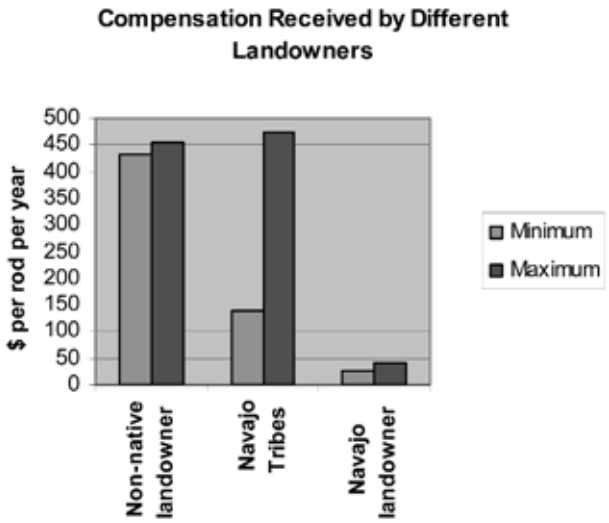
How to Determine Reasonable Compensation

Often, there is no equality in the amount of compensation received from one landowner to the next, or from one region to the next. Also, it is not always easy to find out how much you should be asking for. Often, there are clauses in surface use agreements that prohibit surface owners from disclosing the details of their agreement. This makes it extremely difficult for landowners who are negotiating a surface use agreement to know what is reasonable, or to try to negotiate agreements similar to what their neighbors have negotiated. Still, that should not prevent landowners from talking with other landowners or attorneys, and trying to find out what level of compensation others have been able to receive.

Navajo landowners not receiving the "fair market value" for leased land

Many natural gas pipelines that originate in the San Juan Basin of Colorado and New Mexico cross lands owned by Navajo tribes, individual Navajo landowners, and non-Native landowners. In August of 2003, it was brought to light that some Navajo tribes and individuals in the region were not being compensated for pipeline rights-of-ways at the same rate as private landowners. A report released by a court-appointed investigator revealed that the U.S. Department of the Interior leased Navajo land to oil and gas pipeline companies for as much as 20 time less than the amounts paid to nearby private landowners. "It is doubtful," wrote the investigator, Alan Balaran, whether Navajos "are receiving 'fair market value' for leases encumbering their land. It is certain they are denied the information necessary to make such a determination."[458]

On an annual basis, private landowners who leased their land to oil and gas companies received between $432 and $455 per rod (16.5 feet) of land leased; Navajo Tribes negotiated payments of between $140 and $475 per rod; and individual Navajo landowners only received from $25 to $40 per rod. Using these figures, over the 20-year life of the leases, individual Navajo landowners could receive $11,000 less than their private landowner neighbors. According to a Denver Post article, because the Interior Department did not provide translators for the pipeline right-of-way negotiations, "some of the individual Navajos put their thumbprints on dubious leases they couldn't read and never had explained to them."[459]



The government in Alberta, Canada, has prepared information for surface owners on how to determine adequate compensation payments.[460] Alberta is a major oil and gas producing region, and oil and gas companies that operator there are required to negotiate a "surface lease" with the surface owner (similar to the mineral lease that is negotiated with a mineral owner). In fact, companies are not allowed on a surface owner's property, except to conduct the land survey, until the lease has been negotiated, signed, and the first-year compensation paid. Although prepared for Alberta landowners, the guidelines below may provide landowners in the United States with a starting point for assessing how much to ask for in compensation.

The dollar amounts are in Canadian dollars ($1 Canadian = approximately $0.83 U.S.).

Entry Fee	The entry fee is $500 (approximately $415 U.S.) per acre of land granted to the company, to a maximum of $5,000 when 10 or more acres are used. The minimum entry fee is $250, paid when the area is half an acre or less. • For example, if a company uses 4.25-acres, the entry fee would be: 4.25 acres x $500 = $2,125 *Note: the entry fee for many U.S. states is higher than this amount. For example, in Wyoming the initial payment, which is akin to this entry fee, is closer to $2,000 (US) per acre.
Land Value	The value of the land used by the company is determined by the price expected if the land were sold on the open market by a willing seller to a willing buyer at the time when the lease was prepared. The value is also based on the highest approved use (agricultural, industrial, residential) for the land. • The per acre value for the well site is determined by dividing the value of the titled unit by the number of acres required.
Initial Nuisance, Inconvenience and Noise	This payment is for nuisance during the first year of the lease. • For example, in the first year landowners likely have to spend time dealing with a company's representatives and surveyors, preparing documentation, negotiating with the company and/or seeking advice from government agencies or lawyers. There may also be noise and inconvenience related to construction. The company should pay reasonable compensation to you for nuisance. Keep a record of all time spent, phone calls made and expenses incurred.
Loss of Use of the Land	The company pays an annual compensation for loss of the normal use of the well site area during the well site's life. The amount should approximate the value of the gross annual production reasonably expected from the area. • To calculate the amount, use the greater of yield and price averages from the past five years, or today's street price. For example, assuming canola production at 35 bushels per acre on a well site and access road occupying four acres, the loss would be 4 x 35 = 140 bushels. At $8.50 per bushel, the total annual loss would be $1,190.
Adverse Effect	This payment is related to inconvenience, nuisance and extra costs on the rest of the quarter section where the well site is located. • For instance, farming around the well site may require constantly turning corners, which can cause overlaps, extra strain on machinery, soil compaction, loss of seed and grain, and extra field and labor costs. Other factors related to adverse effect can be noise, dust, odor, additional traffic on the land, and proximity to a residence or farm site.
Other Relevant Factors:	If there are other considerations specific to a landowner's situation, they should be included when negotiating compensation.

FIGURE III-1. ISSUES TO CONSIDER WHEN DETERMINING SURFACE DAMAGE COMPENSATION PAYMENTS.

Reported Compensation Amounts

The following information comes landowners, real estate brokers, attorneys, mineral royalty associations, and community organizations.[461] This information is meant to provide surface owners with an idea of what others have been able to negotiate in various parts of the country. The chart is by no means comprehensive — undoubtedly, some surface owners in these areas receive more or less compensation based on their particular circumstances.

Location	Item	Compensation
Sublette County, WY	Surface damage payment per well	$2,500
Wyoming	Initial payment per well site (1/2 acre) Annual payment Use of existing roads	$1,000 $1,000 $1,000
Wyoming	Initial payment per well Roads and pipelines 4” pipeline – initial payment 4” pipeline – annual payment 8” pipeline – initial payment 8” pipeline – annual payment	$1,000 - $1,500 $5-$10/rod (1 rod = 16.5 feet) $8/rod $4/rod $16/rod $8/rod
Weld County, CO	Surface damage payment per well site (2 acres) 4” pipeline	$4,000 - $5,000 $33/rod
La Plata County, CO	Surface damage payment per well (well site 6/10 acre), plus payments for roads, pipelines and compressor sites 16” inch pipelines	$5,000 - $35,000 $1-$86/rod
Las Animas County, CO	Well site (7/10 acre) Access road	$2,000 - $2,500 $25/rod
Oklahoma	Payment for well pad and access road (appraised value)	$7,500 - $8,600
Kansas	Well site damages 8” pipeline	$5,000 - $10,000 $30-$35/rod

FIGURE III-2. EXAMPLES OF COMPENSATION PAID TO SURFACE OWNERS IN VARIOUS PARTS OF THE U.S.

The following chart (Figure III-3) contains information gathered by the Powder River Basin Resource Council. It shows compensation amounts that some Wyoming landowners were able to negotiate for lands affected by coalbed methane development in the year 2000.[462]

Item	Compensation
Right-of-way easements	$3.00 - $3.50 per rod (1 rod = 16.5 feet; 320 rods = 1 mile)
24-inch diameter pipeline	$13 - $25 per rod
8-, 10- or 12-inch diameter pipelines	$13 - $15 per rod
4- or 6-inch diameter pipelines	$6 - $8 per rod
Small waterlines, e.g., 2-inch diameter	$0.00
Trenches/electrical between well-heads	$0.00
Above-ground power lines and poles	Same as the power company's going rate
Pod Building - meters production, 10 x 12 feet and 8 x 12 feet	$1000/year
Screw compressors – 20 x 40 feet (1 per 8 wells), rented by the acre	$2150/acre for the first year, and then $1200 - $1500/acre for every year thereafter
Large Compressors This example is for a compressor on a 3.67-acre compressor site.	Chain link fence, gravel road to site. Road - $5 per rod per year Compressor - $1300 per acre/year (for five years), with an increase of $500/acre for each additional 5-year renewal period. Reseeding - $325/acre – landowner pays for seed and uses own equipment
Receipt Stations – where production is metered. These stations may include several buildings taking up a 15-foot x 35-foot area.	$1500 per year, paid 5 years in advance. Rental fee is tied to Consumer Price Index, so the initial rental is $7500 after the first 5 years are over. The agreement reflects that $1500 per year is the least the landowner will be paid.
Wells	$500 - $1500 per well for the first year. Every year after that, landowner receives an annual payment of $700 to $1000.

FIGURE III-3. EXAMPLES OF COMPENSATION RECEIVED FOR SURFACE DAMAGE RELATED TO COALBED METHANE DEVELOPMENT.

How much does compensating surface owners affect a company's "bottom line"?
According to the Landowners Association of Wyoming:

> *Surface Owner Accommodation legislation, whether enacted by a ballot initiative or by the legislature, will have no significant impact on revenues generated by Wyoming's oil and gas industry. It may require some additional monies to be spent by the oil and gas industry to compensate the private landowner for losses due to their activities, but those losses are currently being borne by the private landowners—individuals who in no way caused the losses. Currently, Anadarko Production, a top 15 producer, voluntary grants a 1-3% royalty interest in the production to the surface owners on the Union Pacific lands in Wyoming's southern corridor. Clearly, compensating landowners for damages caused by oil and gas activities can go hand-in-hand with being a prudent and successful oil and gas operator.*
>
> *An average well on the Pinedale Anticline in Sublette County costs $2.5 million to drill and complete. Currently companies operating in that area offer $2,500 per well location for a surface damage payment which equates to 1/10th of 1% of the cost of that well going to the affected surface owner. If negotiations ensured by this legislation result in a higher surface damage payment – say even 10 times higher in the extreme case – the surface damage payment would still be less than 1% of the total cost of drilling that well. In this example, the total surface damage payment of $25,000/location would be 3/4 of one day's revenues of a well that is estimated to produce for 20 years. Looking at this another way, the overall IRR (internal rate of return) for this well would be reduced to 25.0% from 25.5% as a result of this higher surface damage payment.*[463]

Examples of Surface Use Agreements

The following are some examples of Surface Use Agreements, which will not only provide you with some guidance on what to ask, but also will help to familiarize you with the language used in these sorts of agreements. The first agreement is a copy of a surface use agreement from Wyoming, which includes clauses that might not be present in the standard agreements that companies ask surface owners to sign. This agreement comes from the Powder River Basin Resource Council web site. This web site also has sample pipeline and right-of-way agreements (see Chapter V for details).

The second agreement is a Mineral Extraction Agreement (MEA) between Ted Turner and El Paso Production Corporation. While not perfect, there are clauses in the Vermejo Park Ranch MEA that are prime examples of how a company can minimize the impact of coalbed methane development on landowners' lives and lands. Ted Turner managed to achieve this agreement without owning the mineral beneath his land. He does, of course, have the financial leverage to negotiate this very landowner-friendly agreement. But this fact should not prevent other landowners from attempting to negotiate similar provisions in their surface use agreements.

FIGURE III-4. CASTLE ROCK, VERMEJO PARK RANCH. Directionally drilled wells access gas beneath this important elk habitat. Photo used with permission from Vermejo Park Ranch.

Sample Agreement

SAMPLE SURFACE USE AND DAMAGE AGREEMENT

This Agreement is made and entered into between _____ _____, of _____, _____, Wyoming _____ ("Owner") and _____, of _____, _____, _____ _____ ("Operator").

IT IS AGREED AS FOLLOWS:

1. **The Land.** Operator holds interests in oil and gas leases covering the following described lands situated in _____County, _____:

   Township , Range , .
   Sections
   _____ County, _____

   and Owner owns the _____, which includes the surface of the above described lands. This Agreement covers Operator's activities on and access across the above described lands only.

2. **Shallow Rights Only.** Notwithstanding any other provision of this Agreement, the rights granted to Operator hereunder shall be limited to operations related to the drilling and producing of wells to the _____ formation. Surface damages for operations related to the drilling and producing of wells to greater depths shall be by a separate agreement to be negotiated by Operator and Owner.

3. **Right-of-Way.** Owner grants Operator, its employees and designated agents, a private right-of-way to enter upon and use the above described lands for the purpose of drilling, completing and producing oil and gas wells on Owner's land. However, access to the above described lands on Owner's portion of the private road known as the "_____" shall be by separate agreement.

4. **Notification and Consultation.** Operator shall notify Owner prior to entry upon Owner's land and shall consult with Owner as to the location of each well, road, pipeline, power line, pod or battery site, gathering system and other facility to be placed on Owner's land. To the maximum extent possible, Operator will use existing roads on Owner's land for its operations, and if construction of a new road is required, Operator will consult with Owner, and following such consultation locate the new road in a manner so as to cause the least interference with Owner's operations on the affected lands. If a pipeline or gathering system is to be installed by Operator, Operator will locate the pipeline and gathering system in a manner so as to cause the least interference with Owner's operations on the affected land. Operator shall notify Owner when each drilling and production operation for any well drilled on the above-described land has been completed and when Operator is permanently or temporarily absent from the surface.

5. **Termination of Rights.** The rights granted by Owner to Operator shall terminate when the Oil and Gas Lease terminates, Operator ceases its operations on the land, upon Operator's notification to Owner of Operator's intention to cease operations, or if Owner so elects, upon a breach of this Agreement by Operator, whichever shall occur first. Upon termination of this Agreement, Operator will execute and deliver to Owner a good and sufficient recordable release and surrender of all of Operator's rights under this Agreement, and will promptly remove all equipment and property used or placed by Operator on Owner's land unless otherwise agreed by Owner in writing.

6. **Nonexclusive Rights.** The rights granted by Owner to Operator are nonexclusive, and Owner reserves the right to use all access roads and all surface and subsurface uses of the land affect-

ed by this Agreement and the right to grant successive easements thereon or across on such terms and conditions as Owner deems necessary or advisable.

7. Payments. As compensation for surface damages, Operator will pay to Owner the following:

a. Stratigraphic Test. $_____ per stratigraphic test (well drilled only to obtain geologic information which is not completed for production) on Owner's land. This amount shall be paid by Operator to Owner before entering upon the premises to drill.

b. Well Locations. $_____ for each well location. This amount shall be paid by Operator to Owner before entering upon the premises to drill the well. Operator shall also pay to Owner an annual rental of $_____ per year for each well site location. This annual payment shall be made on the anniversary date of the commencement of drilling of each well in each and every year until the well has been plugged and abandoned and the location of any roads and pipelines constructed in connection therewith have been reclaimed as provided herein.

c. Roads. Operator shall pay to Owner an initial access fee of $_____ per rod for use of existing roads on Owner's land, and the rate of $_____ per rod for new roads constructed by Operator or existing roads improved by Operator on Owner's land. Operator shall pay to Owner an annual access rental at the rate of $_____ per rod for use of roads on Owner's land. The annual payment shall commence one year from the anniversary date set out in Paragraph 7.b. above for the well or wells served by such road, and shall be made on the anniversary date in each and every year thereafter until the road is reclaimed and restored by operator as provided herein. Operator shall provide Owner with a plat showing the location and length of all roads promptly after their first use, construction or improvement.

d. Pipelines.

i) For each gas gathering system pipeline and each water pipeline less than 8 inches in diameter installed by Operator, Operator shall pay to Owner the sum of $_____ per rod for each such pipeline unless pipelines are located in the same ditch, in which case a single payment shall be made. A take up of any such pipeline shall be at the rate of $_____ per rod. For pipelines 8 inches in diameter or larger installed by Operator, Operator shall pay to Owner the sum of $_____ per rod for each such pipeline. A take up of any such pipeline shall be at the rate of $_____ per rod. Payments for pipelines shall be made by Operator to Owner within fifteen (15) days after installation or take up of the pipeline. There shall be no annual rental payment.

ii) The pipelines referred to in this paragraph are only those gathering system pipelines used in connection with wells drilled on Owner's land or as allowed pursuant to Paragraph 8 below. Surface damages for high pressure (greater than 970 psi) gas transmission pipelines serving lands other than those owned by Owner shall be by separate agreement.

iii) Operator shall be responsible for backfilling, repacking, reseeding and re-contouring the surface so as not to interfere with Owner's operations. Operator shall provide Owner with a plat showing the length and location of all pipelines and gathering systems promptly after their installation. All pipelines and gathering systems located by Operator on the premises shall be buried to the depth of at least three (3) feet below the surface. Owner reserves the right to occupy, use and cultivate the lands affected by such pipelines, and to grant such rights to others, so long as such use does not interfere with Operator's operations. If Operator fails to use any pipeline for a period in excess of 24 consecutive months, the pipeline shall be deemed abandoned and Operator shall promptly take all actions necessary or desirable to clean up, mitigate the effects of use, and render the pipeline environmentally safe and fit for abandonment in place. All such clean up and mitigation shall be performed in compliance with all federal, state and local laws and regulations.

Sample Agreement

e. Gathering, Metering and Compression Sites. For each central gathering facility or "battery site" Operator shall pay to Owner an initial fee of $_____. This amount shall be paid by Operator to Owner before entering upon the premises to construct the battery site. Operator shall also pay to Owner an annual rental of $_____ per year for each battery site location.

f. Power Lines.
   i) Operator will consult with Owner and with the independent power company supplying power to Operator with respect to the location of overhead power lines prior to construction. Overhead power lines will be constructed so as to cause the least possible interference with Owner's visual landscape and Owner's existing and future ranching operations, and, to the maximum extent possible, overhead power lines will be constructed along fence lines or property lines. Construction shall not begin unless Owner has consented to the location of such power lines.
   ii) All power lines constructed by Operator downstream of the independent power company's meters shall be buried and all power line trenches shall be fully reclaimed and reseeded to the satisfaction of Owner. For buried power lines, Operator shall pay Owner a one-time payment of $_____ per rod unless such power line is installed in the same ditch and at the same time as the pipelines described herein, in which case there will be no duplication of payment.

g. Increase or Decrease in Payments. On the fifth anniversary of this Surface and Damage Agreement, and every five years thereafter, surface damage payments provided for in this paragraph shall be increased or decreased (but never below the amounts stated herein) by a percentage equal to the increase or decrease in the Consumer Price Index as published by the United States Department of Commerce for the preceding five year period.

8. **Limitation on Rights.** Owner's land may not be used in connection with operations on other lands owned by Owner which are not described herein or on other premises not owned or leased by Owner without Owner's written consent.

9. **Locations.** All well site locations shall be limited to approximately one (1) acre of land while drilling and no more than one-half (½) acre for permanent facilities. No wells shall be drilled within 1,000 feet of any residence, house or barn on the property without the prior written consent of Owner. No housing or dwelling unit shall be constructed or placed on Owner's land by Operator.

10. **Operations.** Operator shall at all times keep the well sites and the road rights-of-way safe and in good order, free of noxious weeds, litter and debris, and shall suppress dust and spray for noxious weeds upon reasonable demand therefore by Owner. All cattleguards and fences installed by Operator shall be kept clean and in good repair. Operator shall not permit the release or discharge of any toxic or hazardous chemicals or wastes on Owner's land. Operator shall remove only the minimum amount of vegetation necessary for the construction of roads and facilities. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation. No construction or routine maintenance activities will be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of two inches deep, the soil shall be deemed too wet to adequately support construction equipment. All culverts shall be at least 18 inches in diameter. All surface facilities not subject to safety requirements shall be painted to blend with the natural color of the landscape. Only truck mounted drilling rigs will be allowed to drill on the property, and no seismic operations shall be permitted without Owner's written consent.

11. **Consolidation of Facilities.** Whenever possible, Operator will consolidate its facilities for as many wells as practical. Incoming power will be located at centralized points to minimize to the maximum extent possible the construction of above ground power lines. Battery sites will serve as many wells as possible. The consolidated facilities may not be used for operations connected with lands not owned by Owner or with lands owned or leased by Owner which are not described herein.

12. **Dry Hole.** If Operator does not discover oil and gas in paying quantities at a well site and determines the well to be a "dry hole" or upon cessation of production, Operator will give Owner thirty (30) days written notice of the opportunity to take over any abandoned well and convert the well to a water well. If Owner elects in writing to take over the abandoned well and convert the well to a water well, then the Owner will assume all liability and costs associated with the well thereafter, and both parties shall execute any and all documents necessary to provide that the water in the well shall become the property and responsibility of the Owner. If Owner does not elect to take over the well and convert it to a water well, then Operator shall fill and level the location, re-contour the location, distribute the top soil, make the location ready for reseeding and reseed the area, and plug and abandon the well as required by applicable law and regulations. All cleanup and restoration requirements shall be completed, if weather permits, by Operator within six (6) months after termination of drilling or production activities at the well site.
13. **New Roads.** Any new roads constructed by or for Operator shall be limited to twenty (20) feet in width for the actually traveled roadbed, together with a reasonable width, not to exceed fifteen (15) feet from the edge of the actually traveled roadbed for fills, shoulders and crosses. No permanent roads will be constructed unless absolutely necessary and Owner consents to the construction and location of the road. Operator shall annually maintain existing and newly constructed roads used by Operator to the satisfaction of Owner, which maintenance may include shaling, ditching, graveling, blading, installing and cleaning culverts, suppressing dust and spraying for noxious weeds.
14. **Fences.** Operator shall construct stock-tight fences around any dangerous area, including any pits where Operator drills wells. Operator shall rehabilitate and restore all disturbed areas caused by Operator's operations within six (6) months after termination of drilling or production activities at the well site and right-of-way, unless inclement weather prevents such rehabilitation and restoration within that time period.
15. **Cattleguards.** Operator shall construct cattleguards with wings at all fence crossings designated by Owner. Installation of the cattleguards shall be at the sole cost and expense of Operator. Cattleguards shall not be less than 16 feet wide by 8 feet across and shall be set on concrete sills not less than 24 inches high by 16 inches wide. Fence braces shall be installed on each side of the cattleguards. Fence braces shall be constructed of like quality material and installed in like style and form as the fence braces currently constructed on Owner's lands. Cattleguards shall be constructed approximately 6 inches above the existing grade of the road so that water does not run into the cattleguard. Operator shall be responsible for maintenance of all cattleguards used by Operator, together with wings and attached braces. All cattleguards currently in existence on roads used by Operator which are not aligned with existing fence lines shall be reconstructed by Operator so as to be in line with the fence.
16. **Improvements.** No fences, cattleguards or other improvements on Owner's property shall be cut or damaged by Operator without the prior written consent of Owner and the payment of additional damages or the institution of other safeguards to protect the rights and property of the Owner. Upon final termination of Operator's rights under this Agreement, Operator shall return all roads and other rights-of-way or sites as near as practical to the condition which they were in prior to the execution of this Agreement, unless otherwise agreed by Owner. Unless otherwise agreed by Owner, all disturbed areas caused by Operator's activities will be reseeded. Cattleguards shall be removed and fences restored as near as practical to the original condition unless otherwise agreed by Owner, in which case all cattleguards installed by Operator shall become the property of Owner. All cattleguards and fences installed by Operator shall be kept clean and in good repair.
17. **Fencing of Access Roads.** Operator will not fence any access roads without the prior consent of Owner.
18. **Purchase of Shale and Water.** To the extent that Operator's activities require the use of shale, gravel, or water, where reasonable and practicable Operator shall purchase shale, grav-

Sample Agreement

el, or water from Owner at the rates prevailing in the area. Operator recognizes Owner's concern about importation of noxious weeds onto Owner's land and, therefore, agrees wherever possible to purchase shale, gravel, or water from Owner.

19. **First Preference for Work.** Operator shall give first preference to Owner in awarding contracts for any work required to be performed on Owner's land pursuant to the terms of this Agreement, including but not limited to earthmoving, grading or plowing roads, spraying noxious weeds, or reseeding, provided that Owner has the equipment necessary to accomplish the work, is capable of adequately performing the work and is willing to perform the work at rates prevailing in the area.

20. **Payments.** The payments herein provided are acknowledged by Owner as sufficient and in full satisfaction for damages to Owner caused or created by the reasonable and customary entry, rights-of-way and operation and use of the roads and well sites, but do not include damage to livestock, buildings or improvements, or injuries to persons or to any damage or destruction caused to Owner's wells or water supply on the property. Operator shall be liable for damages if, as a result of its operations hereunder, any water on or under the premises which had been potable is affected to the extent that it is rendered nonpotable for humans, cattle or other ranch animals on Owner's premises, or any such water supply, well or reservoir be destroyed or its output diminished. Operator shall be liable for any downstream damage caused to other lands or the operations of other landowners. This Agreement does not relieve Operator from liability due to Operator's negligence or due to spills or discharges of any hydrocarbon or toxic or hazardous chemicals or wastes, or from leaks or breaks in Operator's pipelines. Damage to livestock and damage to crops shall be paid for by Operator at current market value. Any fires caused by Operator's personnel, agents, or assigns shall be paid for by paying the cost of replacement pasture, the costs of trailing or trucking cattle to replacement pasture plus replacement and/or repair costs for all personal property destroyed or damaged. The cost of replacement pasture will be determined by the amount generally accepted in the area for like kind pasture.

21. **Restoration.** Unless Owner otherwise agrees in writing, upon termination of any of Operator's operations on Owner's land, Operator shall fully restore and level the surface of the land affected by such terminated operations as near as possible to the contours which existed prior to such operations. Operator shall use water bars and such other measures as appropriate to prevent erosion and nonsource pollution. Operator shall fully restore all private roads and drainage and irrigation ditches disturbed by Operator's operations as near as possible to the condition which existed prior to such operations. All surface restoration shall be accomplished to the satisfaction of Owner.

22. **Reseeding.** All reseeding shall be done with suitable grasses selected by Owner and during a planting period selected by Owner. Reseeding shall be done at the rate of twelve (12) pounds of seed per acre for range land, and an amount to be determined by Owner for irrigated ground. In the absence of direction from Owner, no reseeding (except for borrow pits) will be required on any existing access roads. It shall be the duty of Operator to insure that a growing ground cover is established upon the disturbed soils and Operator shall reseed as necessary to accomplish that duty. It shall further be the duty of Operator to inspect and control all noxious weeds as may become established within areas used or disturbed by Operator. Operator shall inspect disturbed areas at such times as Owner shall reasonably request in order to determine the growth of ground cover and/or noxious weeds, and Operator shall reseed ground cover and control noxious weeds from time to time to the extent necessary to accomplish its obligations hereunder. Operator recognizes that this shall be a continuing obligation and Operator shall reseed ground cover and/or control noxious weeds until areas disturbed by Operator are returned to as good condition as existed prior to construction.

23. **No Warranty.** Owner makes no warranty of title or otherwise in entering into this Agreement.

24. **Nondisturbance.** Operator and its employees and authorized agents shall not disturb, use or travel upon any of the land of Owner not subject to this Agreement.

25. **Firearms and Explosives.** None of Operator's employees or authorized agents or any other person under the direction or control of Operator shall be permitted to carry firearms or any weapon while crossing Owner's property, and such persons shall not hunt or fish on Owner's property and shall not trespass on Owner's property for the purposes of hunting or fishing or recreational uses. No dogs will be permitted on Owner's property at any time. No explosives shall be used on Owner's property. Operator will notify all of its contractors, agents and employees that no dogs, firearms, weapons, hunting, fishing or recreational activities will be allowed on Owner's property.

26. **Surface Owner's Water.** Operator shall not disturb, interfere with, fill, or block any creek, reservoir, spring, or other source of water on Owner's land. Before conducting any drilling operations, Operator, at its sole cost and expense, will measure or cause to be measured the static water level and productive capacity of all water wells and springs located on Owner's land within one mile of Operator's wells, and will test the water wells for the presence of methane. Operator shall also provide Owner a chemical analysis of all wells and springs within one mile of Operator's wells, which analysis shall measure, at a minimum, the following:

pH	Hydroxide
Hardness (ppm and grains/gallon)	Chloride
Conductivity (mmhos/cm)	Sulfur as SO4
Sodium Absorption Ratio	Salt Concentration (TDS)
Adjusted Sodium Absorption Ratio	Boron
Cation/Anion Ratio	Nitrate
PPM of Calcium, Magnesium, Potassium, Sodium, Iron	Nitrite
Total Alkalinity (CaCO3)	Ammonia Nitrogen
Carbonate	Phosphorus
Bicarbonate	Methane

Owner shall be notified prior to such testing and measuring and Owner or its agents or representatives shall have the right to be present during such testing and measuring. The results of these tests and measurements will be immediately provided to Owner. Operator shall establish a continuing water well monitoring program to identify changes in the capacity of any water wells located on Owner's land and in the methane content of the wells, and Operator shall immediately provide that monitoring data to Owner.

27. **Loss or Impairment of Water Wells or Springs.** In the event that any water well or spring located on Owner's land is lost or materially diminished in productivity, or the quality of water produced by such well or spring is reduced so that the water is unusable by livestock or humans (as the case may be), as a result of production of oil, gas, or water by Operator, Operator shall, at its expense, immediately repair or replace any water well or spring which is lost or diminished in productivity with a new water well or spring at least equal in productivity and quality of water to the lost or diminished well or spring, using a water well drilling contractor acceptable to Owner.

28. **Produced Water.** Surface discharge of produced water will be allowed on Owner's land only with Owner's prior written consent, and only after Owner has approved, in writing, Operator's written water management plan for each discharge point located on Owner's land. In any event, such discharge will be permitted only if it does not degrade or adversely affect the quality of water in reservoirs and water courses on Owner's land or otherwise damage Owner's land. If Owner does not consent to surface discharge of produced water, Operator shall be responsible for piping water off Owner's land and making appropriate arrangements for discharge with adjacent landowners. All water produced and discharged from Operator's wells shall be produced and discharged in accordance with all applicable rules and regulations of any governmental authority. Whenever possible, and if Owner so consents, the produced water shall be discharged directly into an existing drainage system or reservoir, if allowed by appli-

Sample Agreement

cable laws and regulations, and if the discharge will not degrade or adversely affect the quality of water in the drainage system or reservoir, so that the Owner may make beneficial use of the water. Produced water shall be discharged in a way so as to cause the least amount of surface disturbance and damage to Owner's land.

29. **Reservoirs.** If Owner consents to the discharge of produced water but does not wish Operator to discharge any of its produced water into Owner's existing reservoirs, Operator shall be solely responsible for finding a suitable water discharge location acceptable to Owner, building the necessary catchment structures (including pipelines, dikes, dams, and outlet piping) and maintaining the same at its sole cost, risk and expense. Similarly, if Operator requests and is granted permission to use any of Owner's reservoirs, should any such reservoirs require modification, upgrading and/or improvement to be able to hold Operator's produced water, any such modification, upgrading or improvement shall be done at Operator's sole cost, risk and expense. Owner shall not be responsible for payment of any cost associated with Operator's development activities which shall include, but not be limited to water discharge, catchment of produced water or maintenance of any related facilities.
30. **Water Well Mitigation Agreement.** Operator is aware that its operations may impact domestic and/or agricultural water wells in the vicinity of coal bed methane producing wells. In order that the parties hereto may avoid potential future conflict regarding loss of use or degradation of existing water wells by Owner, Owner and Operator hereby adopt the terms and conditions of the Water Well Mitigation Agreement attached hereto as Exhibit "A," to the extent that the terms of Exhibit "A" are not inconsistent with the terms of this Agreement.
31. **Enforcement Costs.** If Operator defaults under this Agreement, Operator shall pay all costs and expenses, including a reasonable attorney's fee, incurred by Owner in enforcing this Agreement.
32. **Time.** Time is of the essence in this Agreement.
33. **Indemnification.** To the maximum extent permitted by law, Operator will indemnify, defend and hold Owner, and if applicable, Owner's officers, directors, employees, agents, successors and assigns harmless from any and all claims, liabilities, demands, suits, losses, damages and costs (including, without limitation, any attorney fees) which may arise out of or be related to Operator's activities on Owner's property (including, without limitation, any claims that Operator's operations hereunder are either illegal, unauthorized, or constitute an improper interference with any parties' rights, or have damaged the lands or operations of adjacent landowners, and including any claims based on the alleged concurrent negligence of Owner).
34. **Compliance with Law.** Operator shall conduct operations and activities in accordance with existing local, state and federal laws, rules and regulations.
35. **Release.** To the maximum extent permitted by law, Operator releases and waives and discharges Owner, and, if applicable, Owner's officers, directors, employees, agents, successors and assigns from any and all liabilities for personal injury, death, property damage or otherwise arising out of Operator's operations under this Agreement or use of Owner's property.
36. **Notice.** Notice may be given to either party to this Agreement by depositing the same in the United States mail postage prepaid, duly addressed to the other party at the address set out below the party's signature on this Agreement. Such notice shall be deemed delivered when deposited in the United States mail.
37. **Designated Contact Person.** Operator and Owner will each from time to time designate an individual, with appropriate twenty-four hour telephone and fax numbers, who is to be the primary contact person for discussions and decisions concerning matters related to this Agreement.
38. **Recording.** This Agreement may not be recorded without the written consent of Owner.
39. **Construction of Agreement.** This Agreement shall be construed under the laws of the State of Wyoming.
40. **Nonassignability.** This Agreement shall not be assigned by Operator to any other entity either

in whole or in part, unless Owner consents in writing to such assignment.

41. Binding Effect. This Agreement is binding upon the successors and assigns of the parties.

DATED this _____ day of _____, _____.

OWNER

_____

By: _____

Title: _____

Address:_____, _____

OPERATOR

_____

By: _____

Title: _____

Address:_____, _____

Agreement Summary

VERMEJO PARK RANCH COALBED METHANE PROJECT
MINERAL EXTRACTION AGREEMENT SUMMARY

The mission statement for all of the Turner Properties, including Vermejo Park, is "to manage Turner lands in an economically sustainable and ecologically sensitive manner while promoting the conservation of native species." Restoring the ecological integrity of Vermejo Park, and then managing that restoration in a sustainable manner, requires planning in very long time-frames, and placing maximum income generation secondary to sustainability.

The Vermejo Park Ranch (VPR) Mineral Extraction Agreement (MEA) governing mineral resource development is a voluntary agreement negotiated and signed by the surface estate (Vermejo Park Ranch) and mineral estate owner, El Paso Production Corp. (Producer).

The MEA was created to allow for the development of Coal Bed Methane (CBM) in the most environmentally responsible manner, while minimizing the short and long-term effects. This agreement is unique in the industry and provides the guidelines, checks and balances, and requirements for CBM development. VPR has established and staffed an Environmental Department, which is responsible for managing the CBM project and assuring compliance with the MEA. Key components of the MEA are as follows:

Covenant of Nondisturbance: Areas of special sensitivity (Sensitive Areas) have been established on the ranch where the producer shall in no event have the right to use or occupy. Sensitive areas at VPR constitute almost 30% of the ranch property.

Total Well Cap: The total number of wells that can be producing at any one time is limited to a set number. In addition, the total number of wells that can be drilled through the life of the project is set.

Well Spacing: All well sites locations are limited to one for every quarter section (160 acre spacing). In addition, well site (0.6 acre) and other facility locations (2-4 acres), roads (20 ft.), pipeline corridors (10-30 ft.) are limited in terms of size of disturbed ground.

Mandatory Groundwater Reinjection: All produced groundwater must be reinjected for disposal purposes unless otherwise approved by VPR. The Producer may use some higher quality produced water (where approved by VPR) for field operations including drilling, reclamation and dust suppression.

Annual General Plan of Development: Prior to Aug 15th of each year the Producer is required to meet with VPR to review and discuss all proposed or contemplated plans for work at VPR in the following Calendar year. Prior to October 1st of each year the Producer submits to VPR an Annual General Plan of Development for the following year. This Plan must have sufficient detail to allow VPR to reasonably evaluate the effect of the proposed activities on the Ranch and assess the Producers compliance with the MEA. VPR has 45 days after it receives a Development Plan to provide the Producer with comments and to request in writing that reasonable changes be made to proposed plan.

Reclamation Bonding: The MEA mandates that at the conclusion of the project all infrastructure, wells, compressors etc., must be removed from the property. In addition, the MEA requires that a reclamation bond be in place related to the Producer's reclamation responsibilities at the end of the project. This includes the full abandonment and reclamation of all well pads, roads and other project related facilities and disturbances. This bond is reviewed and increased on an annual basis as the project grows.

Annual Reclamation Requirements: As soon as practicable, but no later than September 1st of each calendar year, the producer reclaims and restores all new well site locations and other facilities installed that year, to as close to their original state as possible. Reclamation includes grading, top soil replacement and hydro seeding with a native (certified weed free) seed mixture. The Producer is also responsible for noxious weed control in the project area.

VPR Construction Review and Formal Approval Process: VPR Env. Dept. representatives working with El Paso representatives jointly site all proposed future project facilities including well pads, roads, pipeline corridors etc. VPR has final say of the location of all project components, and formally approves all facility locations prior to construction. VPR attempts to locate facilities to minimize visibility, reduce environmental impact, support future growth and expansion, and facilitate and optimize final reclamation efforts.

Viewshed Mitigation Requirement: VPR may request viewshed mitigation to conceal Oil and Gas Facilities in close proximity to ranch infrastructure.

Notice Requirements and Information Submission: Producer must notify VPR of the staking of any oil and gas facility one week prior to staking and a survey must be submitted to VPR 45 days prior to commencement of site preparation. In addition, the Producer submits to VPR a copy of all well logs, as-built diagrams in GPS/GIS electronic format for all roads, electric transmission lines, pipelines and facilities within 30 days of construction completion. VPR also receives daily gas and water production, monthly vehicle tracking reports, and other hydrogeologic data related to the water resources underlying the property. The Producer also supplies VPR prior to Oct 1st of each year, its health and safety and training plans and Producers Emergency Preparedness and Response Plan (EPRP).

Joint Groundwater Monitoring Program: VPR and Producer are jointly conducting a hydrogeologic monitoring program on the ranch properties. This 10-year program is unprecedented in the industry and is focused on monitoring the effects of coal seam dewatering in conjunction with CBM development. If the monitoring program establishes that a portion of the Hydrocarbon Operations is having any material adverse effect on any stream, spring, well or other surface or groundwater resources in or under the ranch land, then upon the request of VPR, Producer shall take all reasonable steps necessary to mitigate the adverse effect as mandated under the MEA.

Water Rights: VPR is the record owner of any and all water rights associated with produced water, and in the event any governmental entity should deem Producer the record owner of any such water rights, Producer shall execute a quitclaim deed or other instrument sufficient to transfer and convey title to any such water rights to Owner.

Vehicle and Personnel Limits: The maximum number of vehicles and workers on the ranch at any one time is limited. These limits fluctuate according to the time of year to accommodate VPR's fishing and hunting programs. Current limits during the summer are 170 vehicles and 300 people. The MEA also mandates a ranch speed limit of 25 m.p.h.

Noise Restrictions: If requested the Producer shall install housing around equipment located within ½ mile of any Sensitive Area boundary. In addition the Producer is required to install and operate noise abatement equipment at all facility locations where economically feasible. A noise threshold of 65 dB at 200 feet from any Oil and Gas Facility must be met.

Secured Access: Access to ranch property by project personnel is monitored 24/7 by security personnel located at 3 access points.

Accident/Spill Response and Notification Plan: All accidents or spills of any type are immediately reported to VPR's Env. Dept.

Restrictions and Limitations on Producers Activities: In general, all drilling and construction activities in given year must be completed by August 31st of each year to accommodate VPR's fall hunting program. In addition, the Producer can only be on the ranch during specific hours of the day. Some additional fall construction activity is allowed but is only in an area of the ranch specified by VPR.

Development Time Line: A timeline is established related to when the development phase of the project must be completed, i.e., installation of all producing wells.

Breach of Contract Damage Clause: A formalized mechanism is contained in the MEA where by VPR can notify the Producer of a breach of contract related to a specific MEA requirement. If the Producer does not comply or cure the infraction in a set time period, then monetary penalties may be assessed.

Leasing

A mineral lease is a contractual agreement between the owner of a mineral estate (known as the ***lessor***), and another party such as an oil and gas company (the ***lessee***). The lease gives an oil or gas company or individual the right to explore for and develop the oil and gas deposits that underlie an area described in the lease. This right exists whether you own both the mineral rights and surface rights or simply the mineral rights. When the lease terminates, all rights to the minerals revert back to the mineral owner.

When you (the lessor) sign a lease you essentially become a partner with that company (the lessee). When a company holds a lease to your mineral property, you cannot lease those mineral rights to another company until the lease term with the first company expires.

As with any partnership, open communication, constant dialogue and true understanding is necessary to maintain a successful relationship. A lease may be something that you may have to live with for many years - perhaps the rest of your life. Consequently, it is in your best interest to maintain a business-like relationship.

- Get everything in writing, and keep the lease in a safe, but easily accessible place. In the event the lease is lost, you should be able to obtain a copy of the lease from the county recorder's office.
- Ask neighbors, government agency staff or other mineral owners and landowners about the company, your potential business partner. It is important to know who you are dealing with before entering into a lease.

Before Leasing Your Minerals

- Ideally, do not lease your minerals until you have negotiated your surface damage agreement. This will give you leverage in negotiating your lease.
- Review the lease carefully and ask questions about those portions not understood. Be sure the forms are readable (i.e., the writing is legible), and that they use language that you understand.
- Consider purchasing a basic book on oil an dgas lease terms, such as *Oil and Gas Law in a Nutshell* by John Lowe.
- Read pre-printed lease forms very carefully. Often, companies create these standard leasing agreements to protect their interests. The mineral owner will almost always want to negotiate adjustments to the standard lease to make it more fair and applicable to his or her situation.

- Within the mineral lease you can stipulate anything beyond the standard leasing provisions that you want with regards to protection of surface property and issues related to quality of life. The company may try to negotiate with you to remove some of your requested stipulations. Once signed, however, the mineral lease is a binding contract.
- Include a clause that says that companies cannot deduct expenses related to gathering, treating and compressing (GTC) gas. If this clause is included, mineral owners may receive thousands of dollars more in royalty payments than if companies are allowed to deduct the GTC costs. See box "Royalty owners may receive millions" for more information.
- Ask for references from the company. These may be landowners who have property where the companies has operating wells. Call the references and ask questions such as:
  - Is the company easy to talk with? Do representatives quickly respond to problems?
  - Are delay rentals or royalties paid regularly and on time?
  - Were you consulted on access road, well site and facility locations?
  - Was site reclamation/restoration done in a timely manner?
  - Have you had any problems with the company, its subcontractors or its workers?

Royalty Owners May Receive Millions

OCTOBER 8, 2003
By Dale Rodebaugh, Durango Herald

A 6th Judicial District Court judge has ruled that BP can't deduct the cost of bringing natural gas to marketable condition from the royalties it pays some 4,000 lessors in La Plata and Archuleta counties.

An attorney for the royalty owners [Bob Miller] estimated the ruling could mean hundreds of millions of dollars owed to lessors.

Miller said BP is shortchanging royalty owners 60 cents per 1,000 cubic feet of gas. "Total damages will reach tens of millions of dollars, and may well reach hundreds of millions," Miller said.

The most important ruling of the four issued on Monday was the finding that the cost of the gathering, treating and compressing [GTC] of the gas is an integral part of bringing it to marketable condition, and those costs cannot be passed on to the royalty owners.

Since 1991, BP has deducted from royalty payments what are known as GTC expenses. "We saw half our royalty checks disappear," said Richard Parry, the lamb rancher who initiated the lawsuit against Amoco in 1994. Parry and his wife, Linda, had received royalties from the firm since the late 1980s. Amoco was subsequently bought by BP. Parry declined to discuss personal particulars. But as for the court victory, he said: "We're real happy. We won big time."

According to Miller, 95 percent of the BP leases in the current case prohibit the deduction of GTC costs or are silent on the matter. Five percent of the leases expressly say that GTC expenses can be deducted.

Note: the above are excerpts from the original story, which can be found at: http://www.durangoherald.com[464]

Lease Provisions to Consider

These are just a few examples of provisions to include in a lease. For those mineral owners wanting more guidance on leasing their minerals to oil and gas companies, please see Chapter V (Other Landowner and Mineral Owner Resources) for a list of references.

A lease agreement contains a number of stipulations, including but not limited to:

- Legal description of the area, and number of acres involved
- An effective date of the lease agreement, and the anniversary date for the lease. This is important because lease rental payments must be paid on or before this date in order to keep the lease in force.
- A statement of the primary term of the lease. This may be any period of time, but it is commonly between 1 and 10 years. If you want a well to be drilled soon, make sure the term is short. Companies may tell you that they will drill quickly, but only a short term lease will ensure that action. Watch out for standard lease provisions that renew the lease or hold it in force without your permission. If these are present, you may ask for them to be removed. Also, recognize that once production is established, oil and gas leases will normally continue for the life of the production.
- Lease Rentals. These rentals are paid to maintain the lease during the primary term. The rental charges vary from lease to lease. Talk with other landowners to find out what is typical for your region. Typically, the first year's lease rental and any bonus should be paid when the lease is negotiated.
- Signing bonus. It is common for a bonus is paid upon signing the lease. In competitive production areas these bonuses can be significant.
- A royalty clause. Royalty is a major consideration for a mineral owner, especially if the lease is highly productive. Look closely at the royalty provision, and understand how it is calculated. The royalty is the share of the oil and gas production that is reserved to the mineral rights owner. It is usually indicated as a fraction or percentage of the proceeds received from the oil or gas that is produced. It is common to have a royalty between 1/8 (12.5%) and 1/4 (25%). Royalty may be received in-kind, which means that the lessor may take physical possession of the oil or gas. Usually, however, the oil or gas is sold to a refinery and the lessor receives payment for his or her share.
- Payment of Royalties. Often, it is stipulated that payment must be received within 30 days of production, and each 30 days thereafter. Payment of royalties directly to the landowner by the gas purchasing company is desirable, so that there is no delay while the oil or gas company does its accounting.
- Shut-in Royalty. If a landowner wants a well to produce gas for his home/farm operation, it should be understood that it will be an interruptible supply because of the nature of the gas production and distribution system. Consequently, the landowner may want to write a lease that provides high enough shut-in royalty to provide for alternative fuels. Landowners may be interested in adding a provision to have the option of taking over a well if it is not in production for 12 consecutive months, or prior to the removal of equipment from the well. If a landowner takes over a well, however, he or she also takes on the responsibility for plugging the well. The landowner should contact the state agencies to find out what their plugging obligations will be, and whether or not the well can be converted to a water well.

- Requiring landowner approval before a lease can be sold to another company. This prevents the lease from being sold to an undesirable company. Sometimes companies will transfer leases without telling the landowner. In a few states there are laws requiring that landowners be notified within 30 days of a lease transfer. If your state has such a law, you can include a provision that automatically cancels the lease if the company fails to notify you of such a transfer.
- Landowner approval in writing of well, tank, access road and pipeline sites. It should be stipulated that written landowner approval must be granted before any construction or drilling occurs. A plat map attached to a lease may be desirable where special land features (orchards, springs, etc.) should be protected. The maximum width of a combined access road and pipeline easement should be established in the lease (e.g., often it is 40 feet during drilling operations and 20 feet after a well is completed). The size of the well drilling site should also be specified.
- Payment of damages for property and crops destroyed by the operations. Many leases contain an indemnification provision, which makes the operator liable for any and all damage and liability resulting from their oil and gas operations. This provision should include wording that makes the company liable for damage to growing crops, trees, fences, buildings, tile lines and drainage ditches, springs, water wells for homes and livestock, other items of significance to the landowner, and all damages to the surface of the lessor's property. A landowner should not accept a lease that only provides payment for growing crops. Such a lease will not entitle the landowner to any other damages, no matter how serious they may be. The landowner may want to include provisions allowing him or her to harvest timber in the area of a proposed well site prior to the company bringing in drilling equipment; and requiring that well heads be fenced in, landscaped, and have sound barriers erected.
- Pipeline Restrictions. Many leases authorize installation of pipelines or transmission lines that may be required. A provision authorizing ONLY pipelines that serve the wells on the landowner's property is desirable. Additional pipeline easements should be negotiated separately.
- Burying pipelines at a specified depth. Since pipelines may or may not be buried according to state regulations, the landowner may want to ask the company to bury the line at a depth that he or she desires (e.g., below tillage depth). The company laying the pipeline should be required to file a map of line location with the landowner.
- Depth of minerals. The mineral owner can specify the depth of the mineral being leased. There are other minerals that may be located at other depths, and those may be leased separately.
- Implied Covenants. In virtually all states, significant mineral owner protections are implied by law in oil and gas leases (for example, requirement of prudent operations, protection against drainage, exploration and development, and marketing of oil or gas). The lease should not limit the covenants normally implied in oil and gas leases.

Other Activities Landowners May Want to Consider

Organize

Organized opposition can play an important role in determining whether oil and gas permits are issued, how closely government agencies oversee the project during its operating life, and what sort of surface owner protections the laws and regulations offer.

Surface landowners can band together, and also work with other interested groups to exert pressure on state legislatures, government agencies, and the oil and gas industry.

- In La Plata County, a number of groups of residents have banded together to negotiate better deals for natural gas pipeline easements crossing their properties. In one case, approximately 30 residents worked together and paid the legal fees needed to negotiate the deal with the company. As a result of their negotiations, the landowers were offered about $86 per rod (16.5 feet) of property used. Residents who were not part of the group were offered anywhere from $1 to $20 per rod.[465]
- The story Bellflower Well (Chapter IV) provides an example of how landowners worked with a county government to pressure a company to implement better mitigation strategies.
- In Michigan, a state-wide coalition of 30 local government and public interest organizations have formed the Michigan Energy Reform Coalition (MERC) seeking to strengthen oversight of oil and gas development, reduce environmental damage from drilling, and increase the authority of landowners and affected communities. MERC, while recognizing that oil and gas development is an important part of the state's economy, has taken the position that:[466]
  1. Local governments and communities are entitled to be full participants in the planning and oversight of oil and gas development.
  2. Townships should have the clear legal right to enact ordinances to regulate oil and gas processing facilities, truck traffic, and the hours of operation.
  3. An impact fee should be levied on oil and gas production that returns a portion of the revenues back to the counties where the development occurs.

  See the story *A Firsthand Account: Support for Bill Comes From Experience*, for more information on MERC and one of the townships involved in that coalition (Chapter IV).

There are numerous national, regional and local groups who are dedicated to improving oil and gas regulations, protecting public and private lands, air and water, and supporting surface owners in their efforts to get the industry to minimize the damages that are done to private property. Some of these groups are listed in Chapter V.

Organizing efforts can target industry, federal and state governments, county or municipal governments, and the public at large. Organizing strategies may include working with other surface owners to pressure a company to improve its practices; using local, regional and national media to highlight your issue; using litigation to force improvements; participating in public review processes; attending public meetings; launching letter writing campaigns to support or oppose bills; writing letters directly to government agencies and legislators; appearing before government commissions or committees; holding mass protests and rallies; and educating the public about your issues using media, door-to-door canvassing, or holding public meetings and events.

Push for Reform of Oil and Gas Regulations

There are different ways to attempt to change the way governments regulate the oil and gas industry. Legal battles have been waged to try to get governments to enact regulations that are more protective of the environment and human health. And citizens have put pressure on government officials through organizing efforts and being vocal about their concerns. Below are some examples of regulatory changes that have resulted from the efforts of surface owners and others.

Litigation Has Led to Changes in State and Federal Government Regulations.
In 1989, a family living in the Black Warrior Basin of Alabama experienced contamination of their water well. Long, oily strings and a strong sulfur smell emanated from their tap water. The family believed the contamination resulted from the hydraulic fracturing occurring at nearby coalbed methane operations.[467] At that time, however, there were no regulations governing hydraulic fracturing. The family enlisted the help of the Legal Environmental Assistance Foundation (LEAF). In hopes that improvements to regulations could be made, LEAF petitioned the federal Environmental Protection Agency (EPA), asking the agency to assume responsibility for Alabama's underground injection control (UIC) program. EPA had delegated this responsibility to the State of Alabama. In 1995, when EPA refused to take responsibility, LEAF took them to court. After years of court battles, the 11th Circuit Court decided that in order for the state to maintain the ability to regulate UIC, the state must regulate hydraulic fracturing.[468] In 1999, Alabama adopted hydraulic fracturing regulations. Some positive aspects of the regulations include that:

- fracturing fluids cannot exceed applicable primary drinking water regulations or otherwise adversely affect the health of persons
- fracturing is prohibited from ground surface to 299 feet below ground surface (bgs)
- for fracturing performed between 300 feet and 749 feet bgs, the company must monitor fresh-water wells within ¼ mile of the well to be fractured, submit a fracturing program to the state, and perform a cement bond log analysis.

  (See Peggy Hocutt's story in Chapter IV, to learn more about the potential effects of hydraulic fracturing.)

Citizen Pressure Has Influenced State Regulations.
If you want to help protect yourself and others from industry practices that affect surface owners' property, water quality, air quality, health and safety; or if you want to protest unfair leasing practices used by industry, one way is to let your voice be heard. Public officials and legislators need to hear from people who have been mistreated by industry representatives, or who have had their quality of life and livelihood affected by the oil and gas industry. If you believe that the laws and regulations need to be reformed, then contact your state legislators, the state Governor, and the directors of the various state agencies that regulate oil and gas.

- In a "smashing breakthrough for citizen advocacy," Michigan citizens were able to get five new oil- and gas-related bills passed in 1999. The positive changes included: protections for state-owned lands; increased funding for state oil and gas oversight; allowing some private landowners to buy back mineral rights from the state; and making health and safety a priority when considering new well permits.[469]
- In eastern Colorado, the drilling of more than 3,000 new wells in the early 1990s caused a protest among farmers so fierce that the Colorado Oil and Gas Conservation Commission established new policies for notifying landowners about drilling before it occurs.[470]

FIGURE III-5. LANDOWNER'S BUTTON FROM ALASKA

Citizens Have Affected Local Regulations and Permitting Processes.
Many landowners have found support from their municipal and county governments. Local governments often have a longer term vision for the health of the community. So if there is enough public concern about a project, they may be more willing to champion the interests of local residents. Below are some examples of how changes to local regulations have worked to benefit surface owners.

- **Water concerns prompt La Plata County Commissioners to attach conditions to permits**
  More and more people are finding that their groundwater wells are being affected by the drilling of nearby gas wells. In response to citizen concerns related to this issue, the County Commissioners in La Plata County, Colorado, attached a water-well testing condition to a controversial gas well permit in a county subdivision. "I'm very nervous about making any concessions about anything having to do with water," Commissioner Bob Lieb said. "If we ruin the water up there we ruin it forever."

  Largely due to public concerns, Commissioners voted unanimously to attach a set of conditions on the well application that were unparalleled in the county. The conditions included: 1) monitoring domestic water wells within ½-mile of the gas well before and after drilling. If contamination is found, the company must fix the problem; 2) build a 6-foot earthen berm and plant trees on the berm to screen the well from sight; 3) after the well is drilled, all work at the well will be limited to between 8 a.m. and 6 p.m.; 4) six months after the well begins producing gas, the company must replace the traditional I-beam pump, which looks like a bobbing horse's head, with a smaller, quieter pump, and switch from diesel motors to electric motors.[471]

  The company complained that the tests were an unfair time burden on the company. Commissioner Fred Klatt said it was hard to imagine the well tests being a burden on Huber, considering that the projected profit from that one gas well was $6.5 million.[472]

- **Gallatin County Commission issues a moratorium on CBM exploration and development**
  In Montana, at the urging of local conservation groups including Park and Gallatin Citizens' Alliance and Greater Yellowstone Coalition, as well as Bridger Canyon Property Owners Association and hundreds of citizens, the Gallatin County Commission adopted a temporary moratorium in July 2002 on exploration and development of all oil and gas. An emergency interim zoning district was also and created in the coal deposit area of Bozeman Pass. The regulations were passed specifically to address a proposal by J.M. Huber Corporation for coalbed methane and natural gas exploration. Earlier, J.M. Huber was denied a permit by the local planning and zoning commission to explore for coalbed methane in an existing zoning district. While the permit denial was unexpected, Huber's subsequent lawsuits against Gallatin County were not. The precedent-setting decision paved the way for Huber to sue the county in both state and federal courts for a "takings" of its private property, among other claims. The outcome of these cases may determine the extent to which local governments can regulate energy development. As of January 2004, the cases remain in the courts.[473]

- **Filer Township adopts a landmark health protection ordinance**
  In 1999, Filer Township in Manistee County, Michigan adopted a landmark health protection ordinance to ensure the safety of residents living and working near oil and gas facilities that are associated with poisonous hydrogen sulfide (H_2S).[474] The rigorous ordinance was developed after three years of repeated refusals by the Michigan Department of Environmental Quality to address the problem. The ordinance built on the tough H_2S exposure standards previously adopted by the township, and requires energy companies to: 1) Conduct a health risk analysis of proposed new pipelines, processing plants, and compression stations. If an

analysis indicates that a project would exceed the exposure limits in the event of an accident, the township would deny the required land use permit. 2) Implement an effective emergency warning system. 3) Inform the township about hazardous materials used on the site.

- **Colorado communities gain some ability to regulate oil and gas**

  In Colorado, courts have ruled that local governments, as well as the state government, have the ability to regulate oil and gas companies. The Colorado Appeals Court decided in 2002 to uphold a trial court ruling in a case between the town of Frederick and the oil and gas operator North American Resources Co. (NARCO). The town had passed an ordinance requiring gas and oil companies to obtain a special use permit to drill in town, and pay an application fee of $1,000; as well as requiring certain setbacks, and noise and visual impact mitigation, among other things. NARCO went ahead and drilled a well without getting a permit from the town. The town initiated a court action, and the trial court stopped the operation of the well and ordered the company to either remove the well or get the required permit from the town. The case went to the Colorado Appeals Court. The Appeals Court ruled that Colorado communities, including counties, can regulate oil and gas wells, as long as the regulations do not conflict with state laws.[475] The court acknowledged that town's ordinances may delay drilling, but upheld the regulatory scheme as a whole because the ordinances did not allow the town to prevent drilling entirely or to impose arbitrary conditions that would materially impede or destroy the state's interest in oil and gas development.[476]

  Examples of conflicts between town ordinance and state laws:

  - the regulations of setback requirements, noise abatement, visual impact of oil and gas operations, and the authority of the town to assess additional penalties for violation of state rules.

  Examples of acceptable community ordinance provisions:

  - requiring companies to obtain a special use permit. The court said that this did not conflict with the state's objectives even though it could result in a delay in drilling.
  - requiring an inspection fee and a $1,000 application fee, because there was no state rule on the amount a local government could charge for these fees.
  - requiring building permits for above-ground structures, access roads, and emergency response and fire protection plans and costs, again because there was no state rule that created an operational conflict with the town's rule.

The state of Colorado fails in its bid to limit local regulation of oil and gas

In 2002, the state agency that oversees oil and gas development, the Colorado Oil and Gas Conservation Commission (COGCC), amended a rule saying that state drilling permits would take precedence over any county permit or land-use approval process. This amendment was challenged in court by La Plata, Archuleta, Las Animas, Routt and San Miguel counties.

In September, 2003, the Colorado Court of Appeals ruled 2-1 that the COGCC overstepped its authority with the amendment, which the court said pre-empted county land-use rights; and the amendment was declared invalid. The two appeals court judges who ruled in favor of the counties wrote that counties "have a legally protected interest in enacting and enforcing their land-use regulations governing the surface effects of oil and gas operations."

Colorado Court of Appeals, September 25, 2003.[477]

- **Residents of Matunuska Susitna Borough in Alaska press for, and get, progressive local regulations on mineral leasing and development.**

  In 2003 Evergreen Resources purchased coalbed methane leases in the Matanuska Susitna (Mat-Su) Borough area of Alaska. Property owners were alarmed to find that State law allowed for permitting of these leases with no public notice. Citizens in the region took it upon themselves to became more and more educated on CBM development, inviting OGAP to Alaska to deliver landowner workshops. Eventually, public outcry against the leasing practices of the state led the Alaska Department of Natural Resources to hold a series of public meetings for the purpose of developing operating standards for the leases.

  After more than a year of controversy surrounding the CBM leases, Pioneer Natural

Resources announced that the Mat-Su leases acquired through its merger with Evergreen Resources would be relinquished to the State. Despite the return of the leases, the Mat-Su Borough Assembly took steps to prevent a situation of this magnitude happening in the future. Members of the Borough Assembly traveled to the lower 48 to visit areas with CBM development and talk with local governments about oil and gas regulations. In the fall of 2004, the Borough Assembly passed a CBM ordinance with several progressive provisions, for example, requiring ground and surface water monitoring plans, and allowing a surface owners to deny access until a surface use agreement is signed. The Mat-Su ordinance is available on-line at: http://www.matsugov.us/Assembly/documents/04-175AMor.pdf

Industry Will Try to Push Back

Citizens and local governments must anticipate that industry may object to any additional regulations that impose a perceived burden on the way that they do business. There have been many cases where citizens have made some strides in surface owner and environmental protection, only to have the industry use their clout to have the protections removed.

- **Exploratory wells allowed in a sensitive watershed, despite community opposition.**
  In 2002, in Delta County, Colorado, local citizens groups such as the Grand Mesa Citizens Alliance, worked hard to organize old-time farmers, ranchers, fruit growers and others to convince county commissioners to reject well applications that threatened the water supply in their county. County commissioners denied four of five applications by Gunnison Energy to drill exploratory coalbed methane gas wells. One Delta County Commissioner said that the wells were denied because they were in the middle of the county's watershed. The one well that was approved was located in a remote end of the county where domestic water supplies would not be threatened. The decision went against an earlier decision by the state Oil and Gas Commission, which approved the exploratory drilling.[478] The county also imposed a moratorium on drilling, pending further study of impacts on the water supply, largely due to the efforts of the Western Slope Environmental Resource Council.[479] Legal actions were initiated by Gunnison against the county, and Delta county against the Colorado Oil and Gas Conservation Commission. In 2003, a Denver District court ruled that the county did not have jurisdiction to deny the permits on the basis of water quality or quantity concerns, and Gunnison was issued its permits.

- **Oil and gas industry tries to remove ability of local governments to regulate oil and gas in Kentucky."**
  In early 2003, the oil and gas industry drafted a bill to remove virtually all ability for Kentucky counties to adopt any ordinances related to oil and gas development. At the time, the law gave counties broad powers to protect public health, safety and the environment, as long as the county's regulations did not conflict with state laws.

  The issue that prompted the bill was that Letcher County, Kentucky was considering passing an ordinance regulating the placement of "gathering lines" used to gather gas and oil from wells, due to abuse of landowners' rights. Rather than suggesting that the state implement a program to address the issue of gathering lines (e.g., make the industry accountable to surface landowners for the damage caused when gathering lines are located), the oil and gas industry simply proposed a bill to remove local government authority over all aspects of the industry.

  In February, 2003, the Kentucky Legislature passed the bill, despite citizens' attempts to stop it.[480] Continued citizen action helped to force some amendments to the bill, and in March, 2003, the Senate passed an amended bill that allows local communities to adopt ordinances that regulate oil and gas exploration, production, development, gathering and transmission, if they do so through community planning and zoning processes. The Senate

amendment also requires the state Department of Mines and Minerals to develop regulations on gathering lines within six months of when the new law takes effect, and to develop regulations on other aspects of the industry.

Meanwhile, Letcher County is continuing to move forward with its ordinance to protect public health, safety and property from damage due to the siting of gathering lines.[481]

File Lawsuits

Both citizens and companies have the opportunity to use the legal system if they believe their rights have been infringed upon. The following are some lessons learned from various legal battles involving landowners and oil and gas companies.

Landowners and Strategic Lawsuits Against Public Participation (SLAPP Suits)

In 1998, landowners and others belonging to a group called SoCURE (Southern Colorado Citizens United for Responsibility to the Environment) became concerned about their water. These residents of Las Animas County were concerned that the produced water from coalbed methane operations might contaminate their drinking water.[482]

The group commissioned studies of the water; and they complained to county, state and federal officials. Prompted by the citizens' concerns, in the spring of 1998 the state conducted its first inspection of the wells since they were originally permitted in 1995. The state found that several wells did not have permits, and other wells were discharging water into unlined ponds without permits. Also, the company's own data showed that some of the produced water contained concentrations of chemicals, such as benzene, at levels that exceeded federal standards for drinking water.

It is not uncommon for companies being challenged by citizens to sue them for slander.

In May, SoCURE gave the company, Evergreen, sixty days' notice that it intended to file suit under the federal *Clean Water Act*. In their notification letter, the group's members enclosed more than a dozen photographs of Evergreen's discharge sites and containment ponds. In July, SoCURE filed the suit. These sorts of citizen lawsuits are allowed under the enforcement provisions of the *Clean Water Act*. The Act gives citizens the right to file a suit demanding that government agencies enforce the Act's regulations and take action against polluters.

Within days, members of SoCURE were sued by Evergreen for trespass and slander. The company claimed that SoCURE members trespassed on company property to take pictures of the gas wells and waste ponds; and that they slandered the company by saying that Evergreen was operating without required permits and by questioning whether health was being threatened by the thousands of gallons of wastewater being generated on a daily basis.

It is not uncommon for companies being challenged by citizens to sue them for slander. These sorts of lawsuits are often known as SLAPP suits, which stands for *Strategic Lawsuits Against Public Participation.* Every year thousands of people are hit with SLAPP suits for such activities as writing a letter to a newspaper, reporting misconduct by public officials, speaking at public meetings, and filing complaints with officials over violations of health and safety laws.[483]

According to the California Anti-SLAPP Project, while most SLAPPs are legally meritless, they effectively achieve their principal purpose: to chill public debate on specific issues. Defending a SLAPP requires substantial money, time, and legal resources and thus diverts the defendant's

attention away from the public issue. Equally important, however, a SLAPP also sends a message to others: you, too, can be sued if you speak up.

It appears that this is exactly what happened in Las Animas County. As part of the lawsuit, the company asked the judge to require SoCURE to provide the company with the names of its members. This was seen as a deliberate attempt to frighten people out of supporting the group. And it worked. According to one SoCURE member, people in the area became so worried about being named in a SLAPP suit that they would only support SoCURE through anonymous contributions.

How to Protect Yourself From SLAPP suits

According to the California Anti-SLAPP Project, there are things that you can do to protect yourself from SLAPP suits:[484]

1. Know your legal rights. Some states have "anti-SLAPP" laws that present a mechanism that allows a judge to dismiss a SLAPP against you at the very outset of the suit. If the judge rules that the suit must be dismissed, the SLAPP filer is required to pay the cost of your defense, including any attorneys' fees.

2. Check out your insurance policy. If you are a homeowner and have homeowner's insurance, see if you have personal injury liability coverage. Some policies protect homeowners from personal injury lawsuits based on such things as defamation, malicious prosecution, abuse of process, etc. Consult your insurance company or an attorney to see if you may be covered. If your present policy does not cover you, ask about a rider which would extend coverage to potential SLAPP claims.

3. Speak the truth. Whether you are writing your government representative or speaking on an issue of public importance, always make sure your statements are factually correct. If your statements are accurate, there will be no factual disputes later on. You may want to keep copies of all background materials and note sources of facts and figures quoted so that you can show where you obtained the information.

   Understand that there are differences between statements of fact and statements of opinion. In some states you may be legitimately sued for false statements of fact, but not for statements of opinion. Be careful. You will not be protected for stating, "In my opinion, Senator Squelch is a liar and a thief," unless, of course, your statement is entirely true. If your words contain an assertion of fact that is capable of being proven true or false — i.e., that Squelch is or is not a liar and a thief — you can be sued if it is shown that your statement is false, even though you tried to qualify the statement as "opinion."

4. Seek legal advice. If you are planning to write to a government official or speak out on a public issue, and you are unsure if your statements could subject you to a lawsuit, contact a lawyer who can assist you. Contact the California Anit-SLAPP Project (information in Chapter V) or check out their web site for a listing of organizations that are knowledgeable about SLAPP suits, and attorneys that can provide advice (sometimes at no charge) to citizens.

   For more information on SLAPP suits, see the references in Chapter V.

Landowners are Winning Some Important Legal Battles

Recently, there have been landowners who have had successes in the courts. These cases set precedents for landowners across the country. Some notable cases include:

- **Wyoming Landowner Victory: Court Holds Paxton Resources Accountable for Damages.** This story illustrates how landowners may have to go to court to have the provisions of surface use agreements enforced.[485]

  A big victory for landowners everywhere was handed down in particular to Dan and Mary Brannaman of Brannaman Ranch in the Powder River Basin of Wyoming. A jury ordered the Michigan-based Paxton Resources, LLC. to pay the Brannamans more than $800,000 for causing extensive damage to their ranch.

  The Brannaman's filed suit in February of 2002 against Paxton Resources, claiming the company neglected its agreement to properly reseed damaged areas, spray for noxious weeds, and build fences to keep livestock from danger. The Brannamans also claimed that the company did not follow through on agreements not to build roads through specific areas or cut fences without consulting them.

  After a five-day civil trial that ended on February 7th, 2003, a 12-person jury ruled that Paxton breached its surface and damage use agreement with the ranch and ordered the company to pay $810,887.

  The Brannamans own their land, but not its mineral reserves and they entered into a surface and damage agreement with Paxton in 1999. The Brannamans testified that after Paxton repeatedly assured them that their property would be treated with respect, the coalbed methane crews turned their roads into mud bogs, left trash on the ground, drove across rangeland, mixed topsoil with salt-ridden soil and did nothing as hillsides eroded. According to a February 9th article in the Billings Gazette, Paxton anticipates appealing the court decision. For more details see Powder River Basin Resource Council's web site, *www.powderriverbasin.org.*

- **Landowners locked out a company, are taken to court—and win!** In Aztec, New Mexico, ranchers tired of having cattle killed by oil and gas industry trucks locked their gates. The following story is excerpted from a newsletter article published by the San Juan Citizens Alliance.[486]

  Last November 14th [2002], three New Mexico ranching families, all members of the San Juan Citizens Alliance, restricted access across their private land by padlocking gates. Ranchers Linn and Tweeti Blancett, Don and Jane Schreiber and Chris Velasquez stood in front of locked gates, restricting access across their private land by gas industry giants such as Burlington Resources, Phillips-Conoco and El Paso Natural Gas.

  The ranchers handed out access agreements to astounded energy industry managers, which allowed operators one key per company for the locked gates. Several San Juan Citizens Alliance members from Colorado were there to support their New Mexico neighbors.

  Most companies refused to sign the access agreements and demanded more than one key. El Paso immediately filed for a Temporary Restraining Order in State District Court against the Blancetts to prevent them from locking the gate. At a court hearing the next week a compromise was reached when El Paso agreed to put an electronic key system on the gate.

  The ranchers were restricting access across their land to limit damages to grass, water

sources, roads and to their livestock. Industry operations have a severe impact on landowners; cattle die from drinking water with high concentrations of hydrocarbons or ethylene glycol and grazing permit numbers shrink because bare well pads reduce the grass available. Gas industry activities directly reduce the livestock producers' income, which threatens the viability of their ranching businesses.

(For more on this story see *Why I Fight: The Coming Gas Explosion*, by Tweeti Blancett in Chapter IV.)