

## Farm Management

# Come to terms with shale oil leasing

**S**HALE well leases have steadily been moving west across the state from the Pennsylvania border. Many landowners are being offered very lucrative leases by energy companies. Shale wells are different than traditional wells in that they are much deeper and use fracking technology to extract the oil and gas. This type of well tends to have more complex leasing arrangements, as well.



## Country Counsel

By ROBERT MOORE

It is important that landowners scrutinize shale well leases carefully. The following are a few of the more important

terms typically found in such leases.

### Pugh clause

The Pugh clause releases any land from the lease that is not subject to a well. This prevents large tracts of land from being tied up with only a single well.

Any portion of the land that is not having oil and gas extracted is released from the lease; the portion of the land that

is producing oil and gas remains subject to the lease.

### Gross v. net royalties

Historically, landowners have received a one-eighth share of the oil and gas produced on the land. Shale leases can often be negotiated to provide the landowner a greater share of royalties. However, it is important to understand if the royalties are gross or net.

Gross royalties are the value of the oil and gas as they are extracted. Net royalties are the gross royalties less costs for marketing, transportation and other expenses the energy company incurs. It is possible for a 15% net lease to be of lesser value than a 12.5% gross lease. The landowner should be sure to know if the lease is gross or net.

### Water

Shale wells use a tremendous amount of water. Most leases, before being negotiated, will allow the energy company to use all water on or under the property, other than water used for residential purposes. This would allow the energy company to drain any ponds and delete aquifers. The landowner should attempt to limit the use of water taken from his or her property.

### Assignment

This provision will allow the lease to be assigned (sold) to another company. It is very hard to negotiate assignment out of a lease. The landowner should expect the lease to be assigned, as leases often are transferred from one company to the next.

The landowner should require notice of any assignment and for the assignment to be recorded at the county recorder. This ensures the landowner is always aware of which company holds the lease.

### Storage wells

Much of the water pumped into a shale well comes back out of the well. This water includes substances that cause it to be unusable for other purposes. This water is pumped into storage wells for disposal.

A lease will often include a provision that a storage well can be drilled on the property. The landowner should prohibit any storage wells in the lease. A storage well creates tremendous truck hauling traffic, and the long-term environmental effects are still in dispute.

The above are just a few of the more important terms in a shale well lease. Remember that any terms or conditions made verbally are likely not enforceable. If a representative of the energy company makes a verbal promise and it is not included in the written lease, a court is very unlikely to enforce the verbal agreement. All terms must be in the lease to be enforceable. Additionally, it is always worthwhile to have legal counsel or someone familiar with shale leases review the lease.

For more information about dealing with shale well leases, turn to Page 50.



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