WESTERN LANDOWNERS ALLIANCE
STEWARDSHIP WITH VISION

A Primer on Oil and Gas Leases and Surface Use Agreements for Members of the Western Landowners Alliance

By: Dan C. Perry

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Assume that you own acres of land in a rural part of your state. You might own all of the legal attributes of that land, including the surface estate, water rights and the mineral estate underlying your land. Or perhaps you own only the surface estate, and some unknown person or entity owns the underlying mineral estate.

One day you receive a telephone call from a person who identifies himself as a "petroleum landman," representing an oil company. This landman would like to make an appointment to meet with you to propose a transaction for the use of your land. Curious, you agree to meet with him.

If you own all of the legal attributes of your land, the landman is probably seeking to acquire an "Oil and Gas Lease" from you. If you own only the surface estate of your land, the landman is probably trying to negotiate the terms of a "Surface Use Agreement" with you, by which the oil company will access your land and use the surface estate in connection with its drilling and production operations. This article will address both scenarios.

OFFER TO ACQUIRE AN OIL AND GAS LEASE

In this scenario, the landman will probably have a written letter offer and a draft of a legal document called an Oil and Gas Lease. The written offer will probably suggest certain important terms. First, there usually is a "bonus payment," made on a per acre basis, in exchange for the mineral owner's agreement to sign an Oil and Gas Lease. Another important term is the length of the "primary term," which is usually a period of years that the oil company will negotiate in which it can study your mineral estate to determine whether it wants to drill or not. At the end of that primary term, the oil company must either commence drilling operations that will maintain the life of the Lease, perhaps for decades, or walk away from the deal, releasing its rights to your mineral estate. Another material term is the payment of a royalty to the mineral owner, being a percentage of either the gross or net proceeds from sales of oil, gas and associated hydrocarbon substances produced from your mineral estate. In addition to these essential material terms, there will also be a large number of less important terms contained in the Oil and Gas Lease, each of which is up for negotiation.

A mineral owner's response to the offer to lease its minerals for oil and gas exploration and production can range from a refusal to discuss the possibility of leasing, to being so elated to receive some money that a lease is agreed to without any negotiation, to a calm and rational negotiation of an eventual deal. This article will attempt to assist the mineral owner in evaluating the offer and how to respond, depending on the owner's plans and goals for its land.

Situation #1

Mineral Owner Does Not Want to Lease Its Land. There are many reasons why a mineral owner might not want to enter into an oil and gas lease transaction with an oil company. Perhaps the surface estate of the land is in a pristine, naturally beautiful condition, and any disturbance of the surface of that land would damage it. Or perhaps there are rare species of animals or plants or other living creatures that would be disturbed. The mineral owner may believe that the technological processes used to drill and extract oil and gas are simply too dangerous and harmful to the environment and water resources to even be considered. It could be that farming, ranching or recreational uses of the surface of the land are deemed more valuable to the owner than any potential recovery from the mineral estate, and might not be able to be undertaken with active oil and gas exploration. Or, finally, perhaps the amount of consideration to be received (cash bonus payment, royalties to be paid, etc.) is deemed too low by the mineral owner to induce it to enter into an oil and gas lease.

Under all of these scenarios, the landowner must determine whether its refusal to enter into an oil and gas lease will succeed in keeping the oil company away. In most situations it will, but it is possible that the law of the state where the land is located, such as Oklahoma, has a strong "forced pooling" statute that could be used to force a mineral owner to lease against its will. Another situation where a mineral owner may not have complete authority to deny an oil and gas lease opportunity is when there are undivided mineral cotenants or non-participating royalty owners who own interests in the mineral estate. In this latter situation, many states have developed a body of law whereby the mineral owner must lease in order to satisfy their legal obligations to their cotenants and royalty owners. Sometimes it would be futile not to lease if all of the mineral owners' neighbors proceed with leasing, thereby altering the surface anyway, or perhaps the neighbors' lands will be lawfully able to drain the oil and gas from under the mineral owner's land under an old legal doctrine called The Rule of Capture. If a mineral owner does not want to lease at all, it would be a good idea to consult with an experienced oil and gas lawyer in the state where the mineral estate is located to determine the potential pitfalls of a decision not to lease.

Situation #2

Accepting a Proposed Oil and Gas Lease Without Any Negotiation. A mineral owner could be so elated to receive a cash payment in exchange for signing an oil and gas lease that it signs the first offered Oil and Gas Lease document submitted. The Western Landowners' Alliance strongly encourages its landowner members not to do this. Most initial offers to lease by oil companies are of a "low ball" nature with room for negotiation, and contain many onerous terms to the landowner. Any rush to accept "fast money" could leave a lot more money on the table, and perhaps could result in disastrous consequences for the mineral owner. We recommend that you consult with qualified oil and gas law counsel in the state where the minerals are situated, and negotiate the best possible deal. For assistance on how to do this, please read the following section.

Situation #3

Negotiate an Acceptable Oil and Gas Lease for Your Particular Land. A widespread myth exists that there is some form of "standard oil and gas lease." In reality, there are as many forms of oil and gas leases out there as can be imagined. Each situation and transaction is different, and ideally the oil and gas lease should be tailored for the specific transaction. Sometimes the landman will tender a proposed form of oil and gas lease called a "Producer's 88" form, that is typed in a miniscule and essentially unreadable font. These types of oil and gas leases should be avoided, as they are usually drafted much more in favor of the oil company and against the mineral owner.

In most situations, the Western Landowners' Alliance recommends that you hire a lawyer who is qualified in the specialty realm of leasing oil and gas rights in the state where the land is situated. Your lawyer will be qualified to review, comment and revise the oil and gas lease proposed by the oil company, or perhaps will propose his or her own form of oil and gas lease. You and your lawyer should consider the following terms in your negotiations.

Description of the Land to be Leased

The first question to be considered is which specific tract of land is being leased, and how is that tract of land legally described. In order to be a valid real estate transaction and overcome the Statute of Frauds, the description of the tract of land must be so specific that a land surveyor could accurately locate the land on the ground. A vague description may not be sufficient to pass this test, and could result in a void transaction. Another good reason to have a strong legal description is to determine the number of acres contained in the tract for various purposes under the Lease, not the least of which is to determine the bonus payment to be made upon lease signing by the mineral owner. Another important reason that the land must be specifically described is to ensure that the oil and gas Lessee will be able to access the land in order to conduct its operations.

Verification of the Authority of the Signatory of the Oil and Gas Lease

Most states allow the owner of the mineral estate to sell and convey various attributes of the mineral estate, such as the "executive right" (the right to sign a binding oil and gas lease on a particular mineral tract), the royalty to be paid from production proceeds of the sale of oil and gas, and other matters. Thus it is important to identify the specific authorized signatories of the Oil and Gas Lease to be signed, which can be done by researching the legal title to the mineral estate. Usually this is done by the oil company's landman through the process of studying the public records in the county clerk's office, or alternatively through review of an Abstract of Title prepared by a local title company. However, this important issue may need to be determined prior to an oil company's appearance on the scene, and thus the responsibility may fall on the owner of the mineral estate to do this research.

Using the Correct "Grant" Language

Early in the Oil and Gas Lease, it is important for the Lessor to legally "grant" the right to explore and produce hydrocarbons to the Lessee. An example of such language would be:

> "*Lessor, in consideration of Ten Dollars ($10.00) and other valuable consideration, the receipt of which is hereby acknowledged, and of the royalties herein provided, and of the agreements of Lessee herein contained, hereby exclusively GRANTS, LEASES and LETS to Lessee, its successors-in-title and assigns, the following described land and minerals, for the purposes and with the right of exploring, investigating, drilling for and operating for, producing, treating, storing and transporting oil, gas and associated hydrocarbon substances...*"

Length of "Primary Term" and Bonus Payment for Leasing

Another provision of the Oil and Gas Lease that is recited early on is the length of the "primary term." The primary term starts with the effective date of the Lease, which is usually the day that it is signed by the Lessor, and then continues for a stated period, such as 180 days, or one, two or three years. During the primary term, the Lessee is not obligated to do anything with respect to the exploration or production of oil and gas from the Lessor's minerals. While not obligated, most oil companies have a reason for acquiring the oil and gas lease, and thus during the primary term they may study the probable existence and location of recoverable hydrocarbon reserves through scientific methods, such as seismology, geochemistry, magnetic and satellite imagery, or through the study and correlation of electric logs taken from the drilling of nearby oil and gas wells. Another possibility is that the Lessee acquired the Oil and Gas Lease for the purpose of

speculation, hoping to sell it to another oil company for a profit prior to the end of the primary term. Or in some instances, a well may be spud by the oil company soon after the Lease is signed. A wise Lessor will query the oil company's landman as to the oil company's intentions for acquiring the Lease; in some instances the landman may be forthcoming and share this information, or more likely this information will be treated as a confidential trade secret. The following is a typical recital of the primary term and bonus payment:

> "*Subject to the other provisions herein, this Lease shall be for a 'paid up' term of three (3) years from this date (herein referred to as the "primary term") and as long thereafter as oil or gas is actually produced in paying quantities from the leased premises or land with which said leased premises are pooled hereunder, except as expressly stated herein to the contrary. The bonus consideration to be paid by Lessee to Lessor at the execution and delivery hereof for the granting of this lease is the amount of $X per acre times the number of net mineral acres owned by Lessor within the leased premises.*"

Royalty

It is helpful to think of an Oil and Gas Lease as a joint venture, or partnership, to the extent that the Lessor is contributing land to the venture and the Lessee is contributing money, equipment, expertise and labor. In concept, the Lessor's return on his investment is based on the success of the venture. If the drilling results in substantial production and sale of hydrocarbons, the Lessor benefits with monthly royalty payments. On the other hand, if the well is a dry hole and there is no production, the Lessor receives no royalty payments. The case law of oil and gas royalties is fraught with examples of how disagreements can arise between Lessors and their Lessees. Some Lessees have created allegedly fictional "marketing affiliates" that are used to value royalties lower than the real market sales price. Perhaps the Lessee will take liberties with defining the "market price," and will pocket the difference between a fictional market price and the real sale or market price. In some instances, elaborate frauds have been used to recite false lower volumes of hydrocarbons produced.

Another area of disagreement can arise when the Oil and Gas Lease allows the Lessee to deduct pro rata costs and expenses from the royalty - such as for transportation, compression, processing or marketing. In this situation the Lessee may recite excessive and unfair costs that are not based on the real expenditures. It is difficult for the Lessor to know what the real costs actually were, or whether they were reasonable.

There are many other examples of disputes between Lessors and Lessees with respect to whether true and accurate royalty payments are being paid. The best way to deal with this situation is to provide very specific standards for the payment of royalty, and to bar the use of known schemes. As for cost deductions, try not to allow them at all. Thus the royalty is paid on a gross volume produced basis, rather than on a basis net of costs. This is easy for the Lessor to verify on a monthly basis by examination of his royalty check stub. A gross volume of oil, gas or liquid byproducts of gas is recited, along with the market price or sale price for same, and the royalty payment is simply a fraction of that stated amount. It is also wise to reserve the right to audit royalty payments; while it is expensive to conduct a royalty audit, sometimes it is money well spent.

Another alternative is to use a price "index," being a well known, accepted, quoted price, such as the NYMEX quoted price for West Texas Intermediate Crude for oil, or Houston Ship Channel for natural gas. Lessees rightfully argue that there should be a deduction from the quoted price for a "cost differential" related to distance to market. In my experience, an index royalty can usually only be secured by Lessors when they have a large tract of land and a lot of bargaining power.

As for determining the actual percentage of royalty to be paid to the Lessor, it is a matter of relative bargaining power and negotiation. Usually the highest royalty that can be negotiated is 25%, but 20%, 18.75% or 16.67% are more common. Forty to one hundred years ago the generally accepted royalty fraction was 1/8th (12.50%), but that is now justifiably deemed too low in most instances.

The following is a good form of royalty clause to consider insertion into your Oil and Gas Lease. It should be noted, however, that different states have different requirements that should be addressed in drafting. Also, the relative bargaining power of the Lessor and Lessee will vary, and thus the Lessor may not have sufficient strength to ask for this kind of detail in the royalty clause.

"The royalties to be paid by Lessee to Lessor, are as follows:

A. Oil and Condensate Royalty:

On oil and condensate, __________ percent (__.__%) of 100% of that sold by Lessee with its oil and condensate produced and saved from said Land, at the same price received by Lessee for its oil and condensate or at the market price for same, whichever is higher.

B. Gas Royalty:

(1) If Lessee shall enter into a bona fide contract or arrangement with any person, firm, corporation or other business entity which is not owned or controlled by Lessee, in whole or in part, nor by a subsidiary or affiliate of Lessee and which does not own or control Lessee, in whole or in part, and of which Lessee is not a subsidiary or affiliate, for the sale or delivery of gas from the Lands or lands with which the Lands or any part thereof may be pooled as permitted herein, for processing in a plant or plants for the recovery of liquids and/or liquefiable hydrocarbons therefrom, Lessor shall have and be entitled to a royalty of _______ percent (__.__%) of 100% of all products, proceeds, monies, benefits and other things of value, of every kind or character, received by Lessee or to which Lessee is entitled under such contract or arrangement for the liquid and liquefiable hydrocarbons and products so extracted, absorbed, separated or saved, and attributable to gas produced from the Lands or lands with which the Lands or any part thereof may be pooled as permitted herein, and in addition to the royalties on plant products, Lessor shall be paid as royalty the market value at the outlet of such plant or plants of _______ percent (__.__%) of 100% of all residue gas attributable to the Lands or lands with which the Lands or any part thereof may be pooled as permitted herein, and sold or used. "Residue gas" as used in this subsection is understood to mean gas at the outlet side of the plant or plants after the same has been processed for the extraction, absorption or separation of the liquid and/or liquefiable hydrocarbons from same. No royalty shall be paid on gas volumes used or consumed as plant fuel or attributable to shrinkage during the processing cycle.

(2) If gas (which term "gas" includes casinghead gas) produced from the Lands or lands with which the Lands or any part thereof may be pooled as permitted herein, is processed in a plant or plants (as hereinafter defined) owned or controlled by Lessee, in whole or in part, or by a subsidiary or affiliate of Lessee, or as to which plant ownership Lessee is a subsidiary or affiliate, for the recovery of the liquid and/or liquefiable hydrocarbons therefrom, Lessor shall have and be entitled to a royalty of _____ percent (__.__%) of 100% of the highest percent accruing to a third party processing gas through such plant under a processing agreement negotiated at arm's length (or if there is no such third party, the highest percent then prevailing in processing agreements in the general area), whichever is greater, of all plant products, including, but not limited to all condensate, distillate, natural gasoline, kerosene, methane, ethane, propane, butane (iso and normal), pentanes and all other hydrocarbons and products so extracted or absorbed, separated or saved from said gas, the same to be delivered free of cost at Lessor's election, either at the plant or plants, or to the credit of Lessor into the pipeline to which the plant or plants may be connected; and, in addition thereto, Lessor shall be paid as royalty the market value at the

point of delivery to the pipeline purchaser if sold, or if used, at the point of use, of ______ percent (__.__%) of 100% of all residue gas attributable to the Lands or lands with which the Lands or any part thereof may be pooled as permitted herein, and sold or used, which residue gas is understood to be the gas at the outlet side of the plant or plants after the same has been processed for the extraction of the liquid and/or liquefiable hydrocarbons from same. No royalty shall be paid on gas volumes used or consumed as plant fuel or attributable to shrinkage during the processing cycle.

(3) On all gas (including casinghead gas and other substances, including carbon dioxide and helium produced from the Lands or lands with which the Lands or any part thereof may be pooled as permitted herein, and sold or used), sulphur or other substances for which no royalty is otherwise specified in this Lease, Lessor shall be paid as royalty the market value at the point of sale or use of _________ percent (__.__%) of 100% of all such gas sold or used.

(4) It is expressly agreed that for the purposes of this Lease the term "market value" is defined as follows:

a. If Lessee shall enter into a bona fide arms-length sales contract for the sale of oil, gas or associated substances to a purchaser which is not owned or controlled, directly or indirectly, in whole or in part, by Lessee, nor by any subsidiary or affiliate or parent company of Lessee, and as to which purchaser the relationship of subsidiary or affiliate does not exist, and if such contract shall contain adequate provisions for the re-determination, at least annually, of the price for which the oil, gas or associated substances are sold, to insure that the price for such oil, gas or associated substances will always be reasonably equivalent to their current market value, when produced, within the county or counties in which the leased premises are located, the market value of the oil, gas or associated substances sold under such contract shall be considered to be the price received by Lessee therefor; or

b. On all oil, gas or associated substances which is used by Lessee or which is sold by Lessee to a purchaser which is owned or controlled, in whole or in part, by Lessee or by a subsidiary or affiliate of Lessee, or as to which purchaser the relationship of subsidiary or affiliate exists, or which is sold under a contract which does not meet the requirements of subparagraph a. above, the market value of such gas shall be considered to be the higher of (a) the price received by Lessee therefor, or (b) the arithmetical average of the two (2) highest prices paid by a purchaser or purchasers (including Lessee or any subsidiary or affiliate or parent company of Lessee) for comparable sales of oil, gas or associated substances produced in the county or counties in which the leased premises are located.

c. It is agreed that Lessee shall be under the duty to exercise the utmost good faith and fair dealing in the disposition, sale and accounting to Lessor for Lessor's royalty.

d. Lessor's royalty interest shall, in all cases, bear its proportionate part of all production, severance and ad valorem taxes attributable thereto.

e. Lessor's royalty shall never bear, either directly or indirectly, any part of the costs or expenses of production, gathering, dehydration, compression, transportation (except transportation by truck), manufacturing, processing, treatment or marketing of the oil or gas from the leased premises, nor any part of the costs of construction, operation or depreciation of any plant or other facilities or equipment for processing or treating said oil or gas produced from the herein leased premises; provided, however, that no royalty shall be payable on any gas produced from the leased premises and used by Lessee as fuel for compression or dehydration of Lessor's royalty share of such gas for sale. {If the minerals are situated in Texas, the following additional clause should also be used: The precedent of NationsBank v. Heritage, 939 S.W.2d 118 (Tex. 1997), and its progeny, shall have no application to or control over the terms of this Lease.

f. Where gas from a well producing gas only is not sold or used for ninety (90) consecutive days, and this Lease is not being otherwise maintained, this Lease may be maintained in force and effect for successive periods of twelve (12) months each, not to exceed a total of two (2) years in the aggregate after the expiration of the primary term, provided Lessee shall pay or tender to the owners entitled to royalty within ninety (90) days after the date on which the well is shut-in, the sum of Twenty-five and no/100 Dollars ($25.00) per acre for each acre held by said well under this Lease on the date of payment, which payment will operate to extend this Lease for a period of twelve (12) months beyond the date on which such well was shut-in. A second payment of like amount may be made on or before the first anniversary date on which such well was shut-in and will operate to extend this Lease for an additional twelve (12) months.

g. In the event that a gas well is brought in on a tract of land adjacent to (1) the leased premises or (2) a pooled unit which includes all or part of the leased premises ("outside well") and the production therefrom is draining the leased premises or pooled gas unit and Lessee timely drills an offset well to such outside well and completes such offset well as a commercial well, but during the term of this Lease, Lessee shuts-in such offset well, then Lessee shall be required to pay to Lessor a compensatory royalty equal to twenty percent (20.00%) of 100% of the market value [as determined under Section III.B.(5)b] of the production obtained from the outside well during the period when said offset well is shut-in. Such compensatory payments shall be made monthly and such monthly payments shall be paid within sixty (60) days from the end of the applicable month of production from the outside well. Such payments shall continue to be applicable for any period when the outside well is producing gas and the offset well on leased premises is shut-in under the terms of Section III.G. However, Lessee shall have the right to deduct from the amount of compensatory royalties otherwise payable hereunder the amount of the shut-in payments made by Lessee to Lessor for the applicable period pursuant to Section III.G above. If, after compensatory royalties have been paid, Lessee commences actual production from the offset well and, within one (1) year after such commencement, Lessee has brought *production back into balance (based upon the respective deliverabilities of the two wells) with the outside well (and adjusted according to deliverability), then, after such one (1) year period, Lessee may take as a credit each month against monthly royalties owed Lessor, over the following 12 months, one-twelfth (1/12) of the total compensatory royalty paid to Lessor.*

h. Lessee shall provide Lessor at the time of such royalty payment, a statement showing the total amount of production in the period for which the payment is made, the disposition of all substances produced hereunder during said period (including, but not limited to, the volume delivered to each buyer, and the price paid by each buyer) and a statement of gross proceeds and all expenses charged against the proceeds realized from production.

i. All royalties that may become due hereunder on oil shall be paid to Lessor (actually received by Lessor) on or before the 25th day of the second month following the month in which such oil is produced, and royalties on gas shall be paid to Lessor (actually received by Lessor) on or before the 25th day of the third month following the month in which such gas was produced. In no event shall the commencement of payment of royalties be delayed beyond ninety (90) days after the first day of the first month after commencement of production from any well, except in case of bona fide questions of title. Lessor shall be paid interest at the rate of ten percent (10%) per annum on all royalties not paid on or before said due date, from the date thereof until fully paid. Lessee shall not be penalized for any delay in Lessor receiving royalty payments when the royalty payment has been mailed at least three (3) days prior to the due date.

j. Lessor shall have the right at all reasonable times, personally or by representative, to inspect the books, accounts, contracts and records of Lessee pertaining to the development, production, saving, transportation, sale and marketing of the oil, gas and sulphur from the leased premises. Upon written request by Lessor, Lessee will provide Lessor with a copy of any gas sales contracts or gas processing contracts covering the sale or processing of gas from the Lands, and full information as to all gas and liquefiable hydrocarbons produced and sold from the leased premises and acreage pooled therewith.

k. It is expressly agreed that all reference to "Lessee" in the foregoing portions of this Section III shall mean and include and apply to the named Lessee and all parties claiming any interest or interests in this Lease under said named Lessee.

l. It is expressly understood and agreed by, and it is the intent of Lessor and Lessee that Lessor's royalty shall be calculated using the total amount realized by Lessee and its affiliates for any and all products produced pursuant to this Lease, including any and all marketing premiums and bonuses, litigation settlements and awards, and all other payments received by Lessee and its affiliates as a consequence of the delivery of any and all products produced pursuant to this Lease. Nothing contained in Section III. herein shall relieve Lessee of its express obligation to market Lessor's share of production at the *highest current market price reasonably obtainable at the time of production based upon comparable sales of gas in the county or counties in which the leased premises are located."*

Continuous Drilling and Dry Hole Credits to Preserve Lease; Partial Termination of Lease, both Vertically and Horizontally

Recall from above that the primary term of the oil and gas lease will terminate on a certain date. What should happen, however, if the lessee is engaged in good faith operations to drill and produce hydrocarbons when that deadline passes? The Lessor wants the Lessee to be encouraged to drill and produce, so it should not penalize the Lessee if a deadline were to pass when the Lessee is trying to acquire hydrocarbons for the mutual benefit of Lessor and Lessee. In order to save the lease under such circumstances, we recommend that oil and gas leases contain both a "continuous drilling" provision and a "dry hole provision." These provisions allow the lease to be extended during periods when continuous drilling efforts pass over the deadline of the expiration of the primary term, or if such efforts result in a dry hole. In either instance, the following language will allow the Lessee a specified number of days to continue its efforts to secure hydrocarbon production without fearing lease termination.

Another situation that can arise is that the Lessee can drill one or more producing wells, but not enough wells to sufficiently "fill up" the density of the land for the maximum production of oil and gas from the specified tract of land. This density is computed through a combination of geoscience and custom in the industry. In such instance, we have crafted a provision that allows a "partial termination" of the lease acreage so that the Lessor can lease that acreage to a third party in order to seek maximum density drilling.

Upon termination of the lease, when one or more productive wells are drilled, another situation arises. Those wells will produce from a certain horizon, or strata, within the land leased, leaving deeper horizons available for lease and further exploration. Thus the Lessor should require a "partial horizontal termination" of the lease under these circumstances.

The following provisions address the foregoing situations:

Pugh Clause.

a. Notwithstanding any provision in this Lease to the contrary, if at the later of (i) the end of the primary term of this Lease or any extensions thereof, and (ii) the date Lessee is deemed to be no longer conducting "continuous drilling operations" under this Lease, any portion of the leased premises that is not included in a production unit as defined herein, then this Lease shall automatically terminate as to that portion of the leased premises located outside of any production unit upon which there is no drilling or reworking operations or production of oil, gas or other liquid hydrocarbons.

Notwithstanding any other provision in this Lease contained to the contrary, upon the later of (a) the end of the primary term of this Lease or any extensions thereof, and (b) the date upon which Lessee is no longer conducting "continuous drilling operations", then this Lease shall terminate and the rights of the Lessee shall cease in the oil, gas and mineral estate in the above described tract of land from a depth of one hundred feet (100') below the base of the deepest sand or horizon (or the stratigraphic equivalent thereto then being produced on the leased premises in paying quantities), it being understood and agreed that Lessee shall release to Lessor any sands, horizons or formations deeper than the sands, horizons or formations producing in paying quantities. The Lessee shall, within thirty (30) days after the later of (a) the expiration of one (1) year after said primary term, and (b) the date upon which Lessee is no longer conducting continuous operations, deliver to the Lessor a recordable release of the leasehold estate created hereby insofar as the same covers the oil, gas and mineral estate in said land below such depth.

Pooling and Unitization

The geological boundaries of a reservoir of oil and gas do not usually honor the political boundaries of ownership of the mineral estate. The Lessee utilizes geoscience to target the drilling of its wells, and sometimes the optimal place to drill may occur at a location where one or more separately owned mineral tracts are situated. In such instances, the Lessee will want to "pool" these multiple tracts into one "unit," whereby the most efficient and promising drilling locations can be used. The problem for the Lessor in this situation is that its royalty percentage will be diluted based on a percentage of how much its land contributes to the entire unit. For example, if 30% of the Lessor's minerals are pooled into the unit, and the Lessor negotiated a 20% royalty, the Lessor's royalty interest from production of oil and gas will be reduced from 20% down to 30% of 20% (30% of @20% = 6%).

If the minerals that are owned are particularly large, say 2,000 acres or more, we recommend trying to prohibit the Lessee from exercising any pooling rights unless the Lessor consents to the same after reviewing the geoscientific basis for pooling its land into the larger unit. In this instance the following language should be inserted in the Lease:

"*Unless otherwise agreed to in writing by and between Lessor and Lessee, pooling for oil or gas is expressly denied and shall not be allowed under any circumstances without the* *express written consent of the Lessor named herein. Further, Lessee is denied the right to seek, or consent to, or participate in the forced pooling of any part of the Leased Premises under the pooling or unitization statutes of the State of ___________ without Lessor's written consent.*"

If the Lessor's tract is 2,000 acres or less, or if it is configured in an unusual shape such that surface access may be challenging, we generally recommend agreeing to pooling, but the circumstances will depend on whether it is a very small tract (in which instance the Lessor should liberally grant pooling authority) or is relatively larger. In the latter instance, the Lessor may provide that a certain percentage of the Lessor's mineral tract must be included in the pooled unit, using language such as this:

"*Lessee is hereby granted the right, at Lessee's option, to pool or unitize all or a portion of the leased premises with any land, lease, or leases, with respect to the production of oil, gas and associated liquid hydrocarbons. A unit created pursuant to the terms of this Lease or pursuant to law, rule or regulation of any agency having jurisdiction, shall be valid and effective for purposes of this Lease even though there may be mineral, royalty or other interests in lands within the unit that are not effectively pooled or unitized. **If Lessee elects to pool as provided herein, at least fifty percent (50.00%) of the pooled unit shall be comprised of the Lands leased herein**.*"

Pooling clauses can be very complicated, and it is beyond the scope of this paper to treat the issue in detail. For an example of a very general provision that permits pooling, see the following:

"*Lessee shall have the right, but not the obligation, to pool, unitize, or combine all or any parts of the leased premises or interest therein with any other parts of the leased premises or other lands or interests, as to any or all depths or zones, and as to any or all substances covered by this lease, either before or after the commencement of operations or production, whenever Lessee deems it necessary, proper or desirable to do so in order to prudently develop or operate the leased premises, whether or not similar pooling authority exists with respect to such other lands or interests. The unit formed by such pooling for an oil well which is not a horizontal well shall not exceed 80 acres plus a maximum acreage tolerance of 10%, and for a gas well or a horizontal well shall not exceed 640 acres plus a maximum acreage tolerance of 10%; provided that a larger unit may be formed for an oil well or gas well or horizontal well to conform to any well spacing or density pattern that may be prescribed or permitted by any governmental authority having jurisdiction to do so. For the purpose of the foregoing, the term "horizontal well" means an oil or gas well in which the horizontal component of the gross completion interval in the reservoir or formation exceeds the vertical component of the gross completion in such reservoir or formation. In exercising its pooling rights hereunder, Lessee shall file of record a written declaration describing the unit and stating the effective date of pooling. Production, drilling or reworking operations anywhere on a unit which includes all or any part of the leased premises shall be treated as if it were production, drilling or reworking operations on the leased premises, except that the production on which Lessor's royalty is calculated shall be that proportion of the total unit production which the net acreage covered by this lease*

and included in the unit bears to the total gross acreage in the unit, but only to the extent such proportion of unit production is sold by Lessee. Pooling in one or more instances shall not exhaust Lessee's pooling rights hereunder, and Lessee shall have the recurring right but not the obligation to revise any unit formed hereunder by expansion or contraction or both, either before or after commencement of production, in order to conform to the well spacing or density pattern prescribed or permitted by the governmental authority having jurisdiction, or to conform to any productive acreage determination made by such governmental authority. In making such a revision, Lessee shall file of record a written declaration describing the revised unit and stating the effective date of revision. To the extent any portion of the leased premises is included in or excluded from the unit by virtue of such revision, the proportion of unit production on which royalties are payable hereunder shall thereafter be adjusted accordingly. In the absence of production in paying quantities from a unit, or upon permanent cessation thereof, Lessee may terminate the unit by filing of record a written declaration describing the unit and stating the date of termination. Pooling hereunder shall not constitute a cross-conveyance of interests."

Mineral Ownership and Title Issues

Oftentimes the mineral owner may own only an undivided percentage of the minerals in a tract of land. In such instance, it is incumbent on Lessor and Lessee to include a "proportionate reduction clause" in the Lease, an example of which is as follows:

> "*If Lessor owns less than the full mineral estate in all or any part of the leased premises, the royalties and shut-in royalties payable hereunder for any well on any part of the leased premises or lands pooled therewith shall be reduced to the proportion that Lessor's interest in such part of the leased premises bears to the full mineral estate in such part of the leased premises.*"

Many Lessors mistakenly believe that the Lessee must lease 100% of the mineral estate before it can proceed with drilling and exploration. To the contrary, the Lessee can proceed from a legal standpoint if it has any percentage of the undivided interest leased. However, in that instance the Lessee must observe the law of "non-consenting cotenants," whereby the Lessee is entitled to recoup its drilling costs; after payback of expenses it must share profits on a pro rata basis with the non-consenting cotenants. This is a high price to pay, so most Lessees endeavor to lease 100% of the mineral estate before proceeding with drilling.

Lessees usually try to secure a general warranty of title from their Lessors. We recommend trying to avoid giving a general title warranty, because it means that the Lessor is guaranteeing and warranting to the Lessee that it owns its interest in the minerals all the way back to when the Sovereign granted title. Land title law can be very complicated, and unknown disputes could exist due to poor drafting of instruments, changes in the law, and for many other reasons. Thus in negotiations with the Lessee, the Lessor should argue that it is the Lessee who has the greater resources and interest in researching the title to 100% of the mineral estate, and thus it should be the sole duty of the Lessee to confirm the Lessor's ownership. If the Lessor prevails in this negotiation, we recommend the insertion of a clause such as this:

> *"This Lease is made without warranty, of any nature, including title to the Leased Premises, either express or implied. It is further agreed that if Lessor is in default on liens secured by the above minerals, or if Lessor has defaulted on taxes owed thereon, Lessee, at its option, may discharge any such property tax, mortgage or other lien upon the mineral estate either in whole or in part and in the event Lessee does so, it shall be subrogated to such lien with the right to enforce the same and apply royalties which accrue hereunder to such defaulting party, toward satisfying the sums paid by Lessee and the balance of Lessor's debt or tax."*

Sometimes the Lessor does not have sufficient bargaining power to proceed without granting a warranty, and in such instance the Lessor should try to negotiate that the Lessor provide only a special warranty of title. This means that the Lessor warrants that it has not leased to any other party besides the Lessee. If acceptable to the Lessee, the appropriate language to use is as follows:

> *"This lease is executed with warranty of title by, through and under Lessor, but not otherwise."*

Title companies will usually not warrant title to mineral estates, and thus oil companies turn to their land professionals and title attorneys to research the Lessor's title. The land professionals are usually the ones who go to the clerks' offices at the courthouse to research and summarize the public ownership indices and documents, and the title attorneys usually are the ones who take this work product as the basis for writing their title opinions. These title documents are very valuable to the Lessor, but usually are not shared by the Lessee unless required to do so by the Oil and Gas Lease. Therefore the Lessor should try to negotiate the inclusion of the following provision:

> "*If Lessee shall have the title to the Lands, or any part thereof, examined by an attorney, Lessee agrees to furnish Lessor promptly with a copy of such attorney's title opinion. If Lessee causes an abstract of title or supplement thereto, or landman's runsheets, to be prepared, Lessee shall furnish a copy of same to Lessor free of charge promptly after its receipt of same.*"

Liability Issues

The Lessor should be concerned if any incidents of liability should arise during the Lessee's operations on the leased premises. Workers could be injured or other torts could arise, and the Lessee's performance of its contractual liabilities is also a concern. Therefore, the Lessor should endeavor to lease only to an oil company with sufficient assets to handle its liabilities responsibly, and/or seek to require the oil company to secure liability insurance that includes the Lessor as an additional named insured in the event of loss. The Lessor should also seek to receive an indemnity in the lease. While it is beyond the scope of this paper to treat this issue in depth, a short form of indemnity is as follows:

> *"LESSEE AGREES TO INDEMNIFY AND HOLD HARMLESS LESSOR FROM ANY LIABILITY WHICH IS CAUSED BY OR RESULTS FROM LESSEE'S OPERATIONS ON THE LEASED PREMISES."*

Force Majeure

The Lessee may request that it be excused from performance of its covenants under the lease in the event an "act of God," also known as "Force Majeure," was to occur. This could result by reason of natural disasters (flooding, hurricanes, tornadoes, etc.), or as a result of a total collapse of product prices (this occurred in the "take or pay" gas contract wars of the 1980s). Such a provision rarely is needed, and should usually be acceptable to the Lessor provided that it has a limit of its term. Thus the following language could be used:

> *"Lessee shall not be liable for any delays in Lessee's performance of any covenant or condition hereunder, express or implied, or for total or partial non-performance thereof, due to force majeure. The term "force majeure", as used herein, shall mean any circumstance or any condition beyond the control of Lessee, including acts of God and actions of the elements, acts of the public enemy, strikes, lockouts, accidents, laws, acts, rules, regulations and orders of federal, state or municipal governments, or officers or agents thereof. If Lessee is required to cease drilling or reworking or producing operations on the Lands (or lands properly pooled under provisions of this Lease) by force majeure, than until such time as such force majeure is terminated, and for a period of 90 days after such termination, each and every provision of this Lease that might operate to terminate it shall be suspended*

and this Lease shall continue in full force and effect during such suspension period. If any period of suspension occurs before the Expiration Date the term thereof shall be added to such Primary Term. The provisions of this Article shall have no applicability in respect of any payments to be made under any provision of this Lease, it being expressly understood and agreed that the provisions of this article shall not override or modify any requirement of such payments. Force majeure shall not continue for a period exceeding two (2) years in the aggregate."

Restrictions on Assignment

We recommend to carefully select the companies that the Lessor does business with, as the Lessor makes a decision at the time of entering the agreement that those companies have a good business reputation, have sufficient financial capital to perform their obligations, and are otherwise acceptable. This careful exercise goes by the wayside if the Lessee is given free reign to assign its interest to any third party. Therefore, the Lessor should try to restrict the Lessee's ability to assign its interest under the Oil and Gas Lease to those companies that the Lessor approves in advance. If the Lessor has sufficient bargaining power to negotiate this provision, it should use the following language:

"The rights of either party hereunder may be assigned in whole or in part and the provisions hereof shall extend to their heirs, successors and permitted assigns; provided however any assignment of this Lease by Lessee without the prior written consent of Lessor, which may not be unreasonably withheld, shall be void."

Implied Covenants and Express Covenants

In the early years of oil and gas leasing, the oil companies had a huge advantage over the mineral owners in terms of sophistication, bargaining power, access to attorneys and inside knowledge. The courts recognized this disparity by developing a body of law to protect the mineral owners from their Oil and Gas Leases, which were essentially deemed by the courts to be adhesion contracts. This body of law morphed into a series of covenants that the courts implied into oil and gas leases. In general, these implied covenants were grouped into a series of "implied duties" on oil companies to properly manage and administer their Oil and Gas Leases, to prevent drainage of reservoirs by competing oil companies on adjacent tracts, to market production, to reasonably develop known oil and gas reserves, and otherwise to protect the mineral owner. As mineral owners became more sophisticated and able to protect themselves, they hired attorneys to negotiate and draft the Oil and Gas Leases, and as this paper demonstrates, the playing field between oil companies and mineral owners has been greatly equalized. The courts began to realize this trend, and developed a new body of law that says implied covenants do not exist when there is an express covenant that generally covers the area of concern. In practice, the Lessor should try to anticipate all potential pitfalls and situations that could arise during the life of the Lessor's oil and gas lease, but it truly is impossible to accomplish this feat given changes in technology, unknown variables and other matters that may arise. Therefore we recommend the Lessor to have the implied covenants stay in force, so that its express covenants can be buttressed when necessary. One way to accomplish this is to simply state as follows:

"All covenants implied by common law into oil and gas leases by the common law of the state of _______ shall be incorporated into this Oil and Gas Lease as if expressly set forth herein, and shall be deemed to co-exist with all of the express covenants recited herein."

A more sophisticated way of saying the same thing would be as follows:

> *"No express obligation imposed on Lessee shall relieve it of any otherwise existing duty of exploration, development, operation, marketing or production, except to the extent of direct conflict with such express obligation, and all such express obligations shall be construed as providing minimal standards only."*

Information

As noted above, it is helpful to understand the oil and gas lease transaction as a partnership between the mineral owner (Lessor; the provider of the mineral land to be explored) and the oil company (Lessee; the provider of the capital and the holder of the expertise to drill and produce). While not a legal partnership, the best Lessor/Lessee relationships derive from mutual respect between the parties and an honest sharing of information. As parties in a competitive industry, most oil companies hold their information "close to the vest." As a royalty owner, however, the Lessor has a legitimate interest to know what is going on with respect to the Lessee's operations. The Lessor therefore should try to negotiate an "information provision" into its oil and gas lease, whereby the Lessor is the beneficiary of receiving relevant information from the Lessee. The following language is an example:

> *"Lessee agrees to furnish Lessor promptly with daily drilling, completion and related reports via e-mail to ________________ (or such other e-mail address as Lessor may later designate) at the same time it sends such reports to all interested parties. Lessee additionally agrees to promptly send copies to Lessor of all electrical logs taken, promptly after taking same, and a copy of each well log, drill stem test or core analyses promptly after completion of each well drilled on the leased premises or drilled by Lessee within one thousand five hundred feet (1,500') of the leased premises, and Lessee agrees to divulge to Lessor true and correct information as requested by Lessor as to such well and the production therefrom, and such technical information as Lessee may acquire and which is readily available with respect to the sands and formations encountered in such well. Lessor agrees, upon Lessee's request, not to divulge to any other person information given to Lessor by Lessee as herein provided, until such information is released by Lessee to the general public. Subject to compliance with Lessee's safety regulations, Lessor shall have the right to be present when wells and tanks are gauged and measured and shall have the right to examine all run tickets and to have full information as to production and runs and copies of all run tickets and copies of production reports filed with the {identify the applicable state regulatory agency}. Lessee shall furnish Lessor within ten (10) days of the filing of same (or within ten (10) days of Lessee's receipt of same, if filed by any third parties) with the {state specific regulatory agency for the state in question} or with any other governmental agency, state or federal, copies of all notices, reports, applications, information and other instruments filed with any such agency, including, but not by way of limitation, applications for field spacing rules, or exceptions from same, well locations, production reports, allowable, productive acreage determinations, or any other documents affecting the leased premises. In the event any notice is given or required by law to be given to Lessee by any offset operator or other third party concerning any hearing of any type affecting the leased premises, or if Lessee has notice or actual knowledge of any such hearing, Lessee agrees to notify Lessor thereof*

within ten (10) days of Lessee's receipt of such notice or knowledge, but in all events prior to the date of any hearing. Upon Lessor giving Lessee ten (10) days prior written notice, Lessor shall have the right at any time during the term of this Lease to review all seismic, proprietary or spec shoot data relating to the Lands which Lessee is not prohibited by applicable agreement from disclosing to Lessor, in Lessee's offices, not to exceed twenty-four cumulative hours on five (5) consecutive days, during normal business hours. Lessee shall furnish Lessor a workstation to review any three-dimensional seismic data."

Miscellaneous Provisions

We recommend that the Lessor close the Oil and Gas Lease with a list of various minor provisions that could prove to be very important down the road. An example is as follows:

A. Acreage Amounts. For determining the amount of any payments hereunder, the leased premises shall be treated as comprising _______ acres, more or less, in _________ County, ________. In the event the leased premises, or any portion thereof, are later found to contain more acres than stated above by virtue of a legitimate, on-the-ground survey, then that actual acreage figure shall control all prospective payments hereunder and Lessee shall be liable to pay the difference for any underpayments theretofore made.

B. Relationship of Parties. This Lease is not intended to create any partnership, association, association for profit, or any other relationship by which any of the parties hereto shall be liable for the acts, either of omission or commission, of the other parties.

C. Survival. The termination of this Lease in whole or in part shall not alter or diminish the rights or obligations of the parties which may have previously accrued, including, without limitation, rights or obligations created by the indemnity and hold harmless provisions contained hereinabove. Any provision herein which may be determined void or against public policy shall not affect any other provision herein, and the entire Lease shall remain valid and in force and effect save and except for such provision.

D. Governing Law. This Lease shall be governed by and construed under the laws of the State of _______, and venue for any claim made hereunder shall be in the appropriate state district court in the county or counties in which the leased premises are located.

E. Releases. Failure to promptly release any acreage in writing as required herein shall result in reasonable liquidated damages payable to Lessor of One Hundred U.S. Dollars ($100.00) per day, to begin accruing on the date that is thirty (30) days after Lessee's receipt of written request for such release. Such liquidated damages shall escalate to Five Hundred U.S. Dollars ($500.00) per day after the 90th day of liability by Lessee. Such amounts are decided upon as being a reasonable amount given the fact that such acreage will have its title clouded and be generally unable to be leased while such cloud exists. Such remedy shall not be exclusive, and Lessor may also elect to sue to have such cloud removed, whereupon Lessee shall also be liable for Lessor's reasonable and necessary attorney's fees incurred in connection therewith.

F. Binding Effect; Amendments; Integration; No Third Party Beneficiaries. The terms of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. This Lease may not be amended, supplemented, extended, or otherwise changed, except by a writing that refers to this Lease and is executed by the parties hereto. This Lease is the final, complete, and exclusive expression of the agreements of the parties hereto with respect to the matters covered by this Lease. No third party is a beneficiary of this Lease. Nothing in this Lease confers any right, privilege, or remedy on any person, other than the parties hereto and their respective permitted successors, assigns, and legal representatives.

G. Discovery Rule. Any cause of action to be asserted by Lessor hereunder shall not accrue until such time as an average, reasonable person, under the same or similar circumstances, would have learned of the existence of such cause of action, and such determination shall not be affected by whether the existence of such cause of action could have been discovered by Lessor had it consulted public records.

H. Effective Date. The effective date of this Lease shall be ___________, 20__.

I. Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document.

Conclusion on Oil and Gas Lease Transactions

Before you "sign on the dotted line" to conclude your oil and gas lease transaction with the oil company, please note the following. You should not deliver the signed and notarized lease to the oil company's representative unless you simultaneously receive, or have already received, the bonus payment, or have made other arrangements to ensure that you receive your funds. If you deliver the signed, original document before you have received your bonus payment, you may regret that you have turned over your most significant leverage. Also, please be wary to not accept a "sight draft" or other document that may look like a negotiable financial instrument that is not a certified check. So-called "sight drafts" appear on their face to be negotiable instruments, but in reality they are not. Such documents provide for a stipulated number of days before they can be submitted for payment from the oil company's bank, and at such time the release of funds to your account is purely at the discretion of the payor. We recommend that the lessor receive a wire transfer to its bank account of certified funds before it delivers the original lease. Receipt of a certified check or, if one is very comfortable with the payor's reputation and honesty, receipt of a business check may be warranted.

Once the bonus payment funds are delivered, the oil company usually takes responsibility for filing the original Lease, or a Memorandum thereof, in the appropriate public records of the county in the state where the minerals are situated. From this point on, it is usually a "waiting game" to see the Lessee's next move within the time permitted by the grant of the primary term of the Oil and Gas Lease.

While we cautioned above that there is no such thing as a "standard form of "Oil and Gas Lease," we want you to be able to see what a complete Oil and Gas Lease looks like. Therefore, please follow this hyperlink for a commonly used form: Form of Oil and Gas Lease – Texas. In conclusion, however, we reiterate that each transaction may have particularly specific situations and needs that require a customized Oil and Gas Lease form to be used. Again, we recommend that you consult qualified legal counsel who is licensed to practice law in the state where the minerals are located.

SURFACE USE AGREEMENTS

As noted above, sometimes a piece of land may have "split estate ownership," meaning that in a prior transaction the ownership of the mineral estate and surface estate was severed so that different parties own each.

The Accommodation Doctrine

While the mineral estate is considered in most states to be the dominant estate in the event of conflict, most states also require the owner of the mineral estate to provide for "due accommodation" of the needs of the surface estate. For example, in Getty Oil Co. v. Jones, 470 S.W. 2d 618 (Tex. 1971), the Texas Supreme Court held that an oil company would have to move its surface facilities for producing oil so that the surface owner could use its pivot irrigation system. In order to benefit from this so-called "Accommodation Doctrine," the surface owner must be able to prove the following elements: (1) the mineral lessee has non-interfering and reasonable ways and means of producing the minerals; (2) the use of such ways and means will obviate the abandonment by the surface owner of its existing use of the surface; and (3) the alternatives available to the surface owners would be impractical and unreasonable under all conditions. The Colorado Supreme Court also adopted a form of accommodation doctrine in Gerrity Oil & Gas Corp. v. Magness, 946 P.2d 913 (Colo. 1997).

Western States that have Adopted Statutes to Protect the Surface Estate

The legislatures of several western states recognized the difficulties suffered by surface owners with respect to mineral exploration and development on their properties, especially in the "split estate" situation where the surface owner received no benefits from the minerals. These states enacted legislation whereby oil companies are required to take certain actions with respect to split estate situations; some require the lessee to take certain efforts to negotiate a Surface Use Agreement before entry onto the surface estate is permitted. The following is a list of those states and their respective statutes that protect surface estate owners with respect to oil and gas development.

- Alaska - Alaska Admin. Code tit. 11, Sec. 83.158
- Colorado - Colorado Rev. Stat. Sec. 34-60-127
- Montana - Montana Code Annotated Secs. 82-10-501 to 511
- New Mexico - New Mexico Statutes Annotated Secs. 70-12-1 to -10
- North Dakota - North Dakota Century Code Secs. 38-11.1-01
- South Dakota - South Dakota Codified Laws Secs. 45-5A-1 to -11
- Utah - Utah Code Annotated Secs. 40-6-2, -5, -20, -21
- Wyoming - Wyoming Statutes Annotated Secs. 30-5-401 to -410

In most of the states that have these statutes, the mineral owner and/or lessee of the mineral owner is required to provide notice to the surface owner prior to commencing drilling operations. Such notice usually must be in a writing delivered more than 10 days before operations are to be commenced. The typical notice requires: (1) location of the entry point to the surface; (2) the date that drilling operations will commence; (3) delivery of a copy of the application for drilling permit; (4) the name, address and telephone number of the drilling operator; (5) an offer to negotiate in good faith any proposed changes to the proposed plan of operations; and (6) a copy of the relevant statute. Most state laws require that the surface owner be compensated for pipeline installation and other surface disturbances. If the operator and surface owner cannot reach an agreement on damages, the operator has the right to proceed with the development, and the damages will be resolved later by litigation or arbitration. In Colorado, an operator cannot proceed with the construction of a pipeline without a written agreement executed by both parties, unless it uses a pipeline company that has the legal right to use eminent domain/condemnation law. In Wyoming, the appropriate state agency will not approve an application for drilling permit with out certification by the operator that it has provided notice of the proposed operations to the surface owner and attempted good faith negotiations to reach an agreement or waiver, and reached an agreement with the surface owner, or, in the absence of an agreement because of a failed negotiation, the operator must certify that it has obtained a surface protection bond.

Sample Forms of Surface Use Agreements

Rather than reinvent the wheel, we are fortunate that a panel of expert oil and gas attorneys recently wrote an excellent tome on the topic of Surface Use Agreements. These attorneys have given their permission to reproduce their article for the benefit of the Western Landowners Alliance at the following hyperlink (p.24): Surface Use Agreements: Multijurisdictional Considerations in Negotiating and Drafting Agreements for Use of Surface Estates in Oil and Gas Exploration, Production and Development[2]. We thank them for their generosity and expertise.

As with Oil and Gas Leases, there is no such thing as a "standard form of Surface Use Agreement." But, since many of you may be curious what such an Agreement may look like, we have provided three common forms in the following hyperlinks:

Wyoming Sample Form of Surface Use Agreement

Montana Sample Form of Surface Use Agreement

Colorado Sample Form of Surface Use Agreement

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Published by the Western Landowners Alliance, 2015

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WESTERN LANDOWNERS ALLIANCE
STEWARDSHIP WITH VISION

Western Landowners Alliance

Western Landowners Alliance (WLA) invites you to join us in advancing the ecological health and economic vitality of private and leased public lands in the West. Led by landowners, we work to advance policies and practices that sustain working lands, connected landscapes and native species. As landowners, we have a vital role to play in shaping the modern American West. Please see our website at www.westernlandownersalliance.org for an introduction to our work, or contact us directly at lallison@westernlandownersalliance.org.

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