Some Farmers Feeling Pressure to Sign Gas Leases

by Sue Smith-Heavenrich

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Last summer, several landowners took advantage of the natural gas rush to pool their parcels and successfully negotiate leases with higher signing bonuses, and sometimes, higher royalties. However, not all landowners have such options. Those with existing leases that expire in the next year say they feel trapped by a lease ill-suited to the new drilling technologies. They feel real pressure to get an updated, better lease if they can.

“When I was a kid the landmen came around every few years and signed up all the farms on leases,” said one farmer. Back then the company offered fifty-cents to a dollar an acre per year, he recalled. So when a landman from Central Appalachian Petroleum knocked on his door a decade ago, offering $3/acre, it seemed like a good deal.

The farmer figured that, as in past years, the company wouldn’t actually get around to drilling. “The truth of the matter was that I had been relying on the history of leasing the farm,” he said. “In the past you’d sign the lease and take the money and eventually the lease just faded away.” Looking back, he feels that signing wasn’t a mistake; he was making the best business decision he could based on the information available at the time.

When the current rush to explore the Marcellus Shale began, the farmer watched as lease offers in Candor and Spencer skyrocketed from $200/acre to $600 to $2000. Like other landowners with 10-year leases nearing expiration, he thought that now would finally be his turn to cash in. Even though his lease runs until May of next year he believed that the lure of a large chunk of land - close to 2000 acres - might interest an energy company in a new lease. He sent off an inquiry to Chesapeake.

That’s when he learned that his old Central Appalachian Petroleum lease contained an extension clause. In talking with other farmers he realized many of them were in the same situation. After a few phone calls and a tense month of waiting, the landowners learned that Central Appalachian Petroleum never intended to extend the leases beyond the primary term. They would expire in nine months.

Meanwhile both Chesapeake and Fortuna Energy approached landowners with the offer of top-leasing. At a meeting in July, Fortuna offered $2,000/acre for a five-year lease to commence upon the expiration of the existing lease: $500 up front and $1500 when the old lease expired.

Given the rush to lease land in the immediate area the farmer, who spoke with *Broader View Weekly* on condition of anonymity, began feeling pressured to sign a top-lease. “People think that when you have a couple thousand acres, it gives you good leverage,” he said. “Truth is, it makes you a target.” He worried that if he did nothing he would likely see drilling on his land before the old lease expired. Top-leasing, at the very least, offered some economic benefit.

In re-reading his existing leases (the family farm holds four leases) he discovered that most of the leases lumped parcels from different parts of town into a single document. That meant that a well drilled on one end of town might tie up unconnected parcels – parcels from the other side of town – in the lease for as long as the well remained operating.

Even though they already held the mineral rights, Fortuna was willing to work out a top lease that offered not only a financial benefit, but also addressed the issue of non-contiguous parcels. The farmer negotiated some language that, while not a Pugh clause, incorporated a similar idea: those parcels not attached or contiguous to land in a drilling unit, even though included in the same lease, will be released at the end of the primary term of the lease.

Landowners who want to realize economic gain from the resource extraction must make allowance for a well pad, access road, and gathering pipelines to transport the gas to a major trunk line such as the Millennium pipeline. Farmers also must consider potential crop loss, soil compaction, pollution of stream and groundwater, the impact of drilling activity on livestock operations, and the ease of accessing the land to plant and harvest crops.

"I've got a gas well on my parcel out in Spencer, and I have no complaints," the farmer added. Fortuna's activity on the land didn't interrupt his dairy operation, though it did take four acres out of production. But he feels the drillers are doing it right. "They stripped the top soil and laid it aside, and then made a gravel base and put in a storage lagoon (pit for wastewater)." Later they hauled the wastewater away.

Fortuna covered crop loss, and he was able to purchase replacement feed for his herd. They also complied with all the DEC regulations. The only reminder that drilling happened is the gas well that remains – with a fence around it – and the four-acre pad in case the company decides to return to exploit the Marcellus formation.

SIDEBAR:
If you have leased or are planning to, check out these resources:

Tioga State Bank is hosting a seminar on "Gas Lease and Royalty Payments and Tax Implications" on Oct 22, 7- 8:30pm at the Treadway Inn in Owego. RSVP required; call 1-888-303-4872.

Photos of gas wells at http://www.broomesteps.org/gasresources/

Gas Exploration and Leasing on Private Land, prepared by Jim Ochterski of Cornell Cooperative Extension at http://counties.cce.cornell.edu/tompkins/2008gasleasing.pdf

Construction projects affecting farmland, including pipeline mitigation at http://www.agmkt.state.ny.us/ap/agservices/construct.html

Information sheet on Natural Gas Exploration put out by the Otsego County Conservation Association at http://www.occainfo.org/documents/GasDrillingInfoSheet.pdf