

COMPENSATION FOR WELLSITE DAMAGES AND PIPELINE EASEMENTS

While drilling activity has slowed down dramatically throughout the United States because of low oil prices and a struggling oil and gas industry, nevertheless, the drilling of infill wells and the drilling of some exploratory and development wells in the deeper horizons underlying the Hugoton Field continues at a steady pace.

New wells are being drilled, new pipelines are being constructed, and new gas markets are being sought by the companies operating in the Field.

Your Executive Secretary's office continues to have frequent inquiries as to fair compensation for wellsite damages and pipeline easements. It comes as a revelation that in reviewing our previous guidelines established for wellsite damages and pipeline easements that they have not been up-dated since the mid 1980's.

Obvious Need for Updating Recommendations for Compensation for Wellsite Damages

Inflation obviously has caused our recommendations for compensation for wellsite damages to be outdated. Many companies operating in the Hugoton Field area are paying considerably more for wellsite damages while other companies are using our recommendations as a lever in negotiating settlement for damages at a less realistic figure.

For this reason, SWKROA President Phil Dick appointed a committee last Fall to review the guidelines and make recommendations to the Board.

As a result of this study by the committee and after considerable discussion at the last SWKROA Board of Directors meeting, the

Board established the following guidelines for our members in negotiating wellsite damages:

Wellsite damages should be compensated on the basis of a minimum of \$5,000 per wellsite at a rate of \$2,500 per acre, assuming a typical wellsite of approximately two acres. If more acreage is involved, the amount of compensation should be adjusted accordingly.

The above recommendation is for normal wellsite damages. The following factors should be considered to determine whether there has been more than normal damages or "excess damages":

- (a) a drilling pit being open for more than four months
- (b) weather conditions which aggravate site damages
- (c) roadway width greater than one rod (16.5') in width
- (d) sensitivity of soil to wind and water erosion
- (e) special irrigation equipment needs, such as ramps, pit, low profile units
- (f) necessity to re-level the site in the future
- (g) use of landowner's water in drilling operations
- (h) multiple roads to wellsite
- (i) effect of roads and pipeline on farm operations
- (j) impact of operations on conservation reserve program (CRP) compliance
- (k) whether top soil and subsoil are not separated
- (l) location of well
- (m) depth of well
- (n) amount of acreage used in

- drilling well, including roadway and pipeline
- (o) cattle guards on pasture land
- (p) fencing wellsite from livestock
- (q) reseeded of grass

Secretary's Note: The above recommended minimums are not unreasonable considering the fact that a number of companies are paying wellsite damages in the range of \$5,000 to \$10,000 and even higher in the event of excess damages.

The January 25, 1990 SWKROA newsletter elaborated on things to consider in your negotiations with the gas company:

In your negotiations, you should understand that under most printed lease forms, the lessee has the right to use so much of the surface as is "reasonably necessary" for his lease operations. While the courts generally rule in favor of the lessee on the question of compensation for use of the surface under "standard" lease forms, many lessees recognize the need for compensation for damages to the surface as well as crop damages and are willing to compensate the surface owner for such damages.

This is particularly true in the Southwest Kansas area. Most major companies operating in the Hugoton field are willing to consider wellsite damages to include damages to the surface as well as damages to crops (including grass).

The question often arises as to how the compensation for wellsite damages should be divided between the landlord and tenant. Unless the farm lease makes provisions for such division, it is a matter of negotiations between the landlord and tenant. The payment normally includes surface as well as crop damages and a more equitable division would seem to be other than a 2/3rds - 1/3rd basis. A division of 50-50

would be fair to both the landlord and the tenant.

One other possible division could be 2/3 to the tenant and 1/3 to the landlord on the crop share and 2/3 to the landlord and 1/3 share to the tenant on the surface. This division recognizes there is permanent damage to the surface belonging to the landlord and that the tenant may or may not be farming the land in future years. This division also recognizes that the tenant has the obligation to restore the surface and is entitled to some compensation for surface damages.

There have also been some complaints by farm tenants that the lessee has contacted the landlord and not the tenant to discuss the well location and wellsite damages. The position of the gas company is that it has no contractual agreement with the farm tenant but only the landowner who is subject to the terms of the oil and gas lease.

To resolve some of these problems, it is suggested that the landlord and tenant work closely together before the well is drilled to resolve the question of division of damages to the mutual advantage of both parties.

Compensation for Pipeline Easements

The guidelines established in 1984 by the Association for recommended minimum compensation for pipeline easements have not been changed because of the past reluctance on the part of the pipeline companies to meet those minimums without threat of condemnation. In recent years, however, the gas companies have exceeded the minimum compensation recommended by the Association, especially across the state line in the Oklahoma Panhandle.

Your Board of Directors will be addressing the issue of adjusting our guidelines for pipeline

easement compensation in its next meeting. The resolution adopted by the Board of Directors at its December 10, 1984, meeting dealing with pipeline easements is summarized as follows:

The SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, acting by and through its Board of Directors, recommends to its members the following minimum compensation to be received for pipeline easements:

<u>Size of Pipeline</u> (diameter)	<u>Dry Land</u> <u>Per Rod</u>	<u>Pasture Land</u> <u>Per Rod</u>	<u>Irrigated Land</u> <u>Per Rod</u>
Up to 8" line	\$30.00	\$35.00	\$35.00
From 9" to 12"	35.00	40.00	40.00
Over 12"	45.00	55.00	55.00

The above recommended minimum compensation does not include payment for crop (including grass) damages to fences, and payment for above-ground obstructions, such as valves, drips and meters. Additional compensation should also be received for these items and other above-ground installations.

The Association further recommends that the pipeline easement include provisions similar to those listed below to protect the rights of the landowners:

- (1) The easement should be limited to one line and should specify the location of the line (In other words, require a plat to be attached to the easement to show the location of the line).
- (2) The line should be buried to a depth of at least 60 inches below the surface, measured from the surface to the top of the line, except in where a minimum cover of 24 inches should be provided.
- (3) If the easement is abandoned, the line should be removed within twelve months from abandonment, and a release of the easement

filed of record by the grantee.

(4) The grantee should pay for damages to land, crops, grasses, fences, timber, livestock, and for damages to other personal property caused in the construction, repair or removal of the pipeline.

(5) No consent from grantee should be necessary for the landowner to fence, or place temporary structures on the land, or to excavate for irrigation, in the proper enjoyment of the land for agricultural purposes.

(6) Any pipeline ditch across irrigated land should be water packed when backfilled, and the right-of-way leveled so as to allow irrigation water to cross the pipeline ditch in a normal manner.

(7) When appropriate, grantee should be obligated, at grantee's expense, to re-seed and establish native grass cover on the right-of-way and the adjoining land used in the pipeline construction.

(8) Grantee should agree to assume the responsibility for and the expense of lowering the pipeline when requested by Grantor when reasonably necessary for the use of Grantor in his agricultural operations, including but specifically not limited to the use of the land for irrigation purposes.

(9) Grantee should agree to compact, backfill and maintain, at original level, the land on which the pipeline is located.

IT IS RECOMMENDED EACH LANDOWNER CONSULT HIS OR HER ATTORNEY AS TO THE EASEMENT FORM AND ITS CONTENTS.

(Secretary's note: The Association has available for its members, upon request, a pipeline right-of-way form containing the above provisions

and several other necessary provisions. If you are interested, please call or write for a copy of the form.)