What Is Negotiable In A Groundwater Transaction?

Presented By:
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EVERYTHING!??
Bargaining Position Depends On…

Who you are?
- Small Landowner
- Large Landowner
- Characteristics of Supply
  - In or out of a Groundwater District
  - Fees
  - Production Limits

Who is the purchaser?
- Direct User
- Third Party Marketer

Price Is Negotiable

Pricing Methodology dictated by Lease or Conveyance
- Pricing Methodologies Include:
  - Oil & Gas pricing concepts:
    - “Guaranteed” money up front
    - Bonus
    - Delay Rentals
    - Shut in payment

- Traditional Water Sales Concepts:
  - Price per 1000 gallons or Acre Foot
  - Take or Pay
  - Options or Reservation Fees
  - Price Escalators

Price Is Negotiable

Pricing Methodologies Include:
- Oil & Gas pricing concepts:
  - Royalty Payments
    - Sold at Lease
    - Sold off Lease
    - Royalty on Take or Pay

Price Is Negotiable
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Pricing Methodologies Include:
- Treatment of Groundwater District Fees
- How much can I get?
  - What’s the market
    - Surface vs. Groundwater
    - Water cost only one component
  - Infrastructure
  - Dependability

Timing Is Negotiable

- Lease and “so long as producing”
- Outright conveyance
- Production some time in the future

Landowner’s Use of Groundwater Is Negotiable

- Uses OK within limits:
  - Domestic and Livestock purposes
  - Garden Irrigation
    (Commercial vs. Non-commercial)
  - Production of oil, gas and other minerals
    (drilling vs. production)

Impacts to Consider When Reserving Uses

- Can affect property values
- Well location can affect what you get from the spigot in terms of quantity or quality
- Future land use is limited by reservation of use and by amounts of available production
  - Rural
  - Urban

Surface Use Is Negotiable

- Be careful of “dominant estate” doctrine
- Groundwater production not as “day to day” as oil and gas

Specify rights:
- Damages payment for surface destruction
- Location of wells (distance from house or “special place”)
- Roads (existing versus new)
- Pipelines (existing right of ways, depth)
- Power and production facilities
- Access and care of roads
- Fences
- Hunting and fishing
- Clean up before, during and after production
- Remember, surface use will affect Landowner’s future use

Production Amount Is Negotiable?

- Sustainability of Aquifer
- Within a Groundwater District
  - count on limits
- Outside a District
  - Maintain a sustainable yield
  - Mine the aquifer
  - Drainage of neighbor
- Will affect future use of land
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