

What Is Negotiable In A Groundwater Transaction?

Presented By:

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EVERYTHING!??

Bargaining Position Depends On...

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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

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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

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Price Is Negotiable

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

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Price Is Negotiable

- Pricing Methodologies Include:
 - Traditional Water Sales Concepts:
 - Price per 1000 gallons or Acre Foot (Lease or Conveyance)
 - Take or Pay
 - Options or Reservation Fees
 - Price Escalators

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Price Is Negotiable

- 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

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Timing Is Negotiable

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

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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)

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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

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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

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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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