



Landowner News

Surface Damage in Oklahoma — The Little Extras

By Rich Fuller, Wildlife Biologist — Energy Emphasis



Recently I attended an educational seminar for surface landowners and mineral rights owners in western Oklahoma. The seminar had several

interesting topics related to oil and gas production and what people should know while entering into a lease for energy-related production.

The speaker giving the presentation was Luke Adams, an attorney with Tisdal and O'Hara lawfirm based in Clinton, Oklahoma. Throughout his presentation, Adams kept mentioning "Little Extras" that surface landowners can receive through negotiating surface damage issues. Since Oklahoma has what is called a "split estate" the subsurface minerals owner(s) may or may not also own the surface. Whenever a well is drilled however, there are requirements placed upon the operator to compensate the surface owner(s) for the damages incurred to the property as the result of the well.

After his talk, I asked Adams to explain more about what he was calling the "Little Extras", but before that, it's important to know more about surface damages as it relates to the company that brings about the damage (known as the "operator") and the surface landowner. The following is a summary of our visit:

Q. "Luke, you mentioned that surface

owners who get an oil or gas well drilled on their property are compensated from the damages associated with that action through the Oklahoma Surface Damage Act. How does the Act help landowners?"

A. "Rich, the Oklahoma Surface Damage Act went into effect on July 1, 1982. Prior to that time an operator was not required to pay the surface owner any amount of money for the drilling of a well on his or her property, except for damages to growing crops, unless the operator's use of the property was deemed unreasonable. The most important part of the Act is that operators are now required to pay you for the damages caused by the drilling of an oil and gas well on your property, reasonable or not. The Act also directs an operator to negotiate in good faith with surface owners prior to entering the property. The Act provides that the intent of these negotiations is to reach an agreement with regard to how much money the surface owner should receive for the damages caused to his or her property as a result of the drilling of an oil and gas well."

Q. "You also mentioned that there are some cases where the Act does not apply. Can you explain?"

A. "That's correct, the Surface Damage Act does not apply in every instance where an operator desires to drill a well on your property. For example, if the operator wants to drill a well in Section 1 to extract oil and/or gas from Section 2, the Surface Damage



Jena Donnell/ODWC

Surface landowners are compensated for damages from oil or gas well drilling.

Act does not apply and the operator cannot force themselves onto Section 1. In other words, assuming you own surface in Section 1, you can tell them no and there is nothing they can do about it. However, if the operator wants to drill a well in Section 1 to extract oil and/or gas from Section 1, the Surface Damage Act applies and the operator can force themselves onto your property."

Q. "Is there some sort of standard scale or formula for calculating the measure of damages?"

A. "Rich, the Act only contemplates the measure of damages caused by the drilling of an oil and gas well on your property. The measure of

damage is the difference in the fair market value of the entire tract of land before the drilling of a well and after the drilling of a well. It's important to note that the measure of damages encompasses the entire tract, not just the actual land taken which is typically 3 to 4 acres. One of the best examples to illustrate this point is when the property wherein the operator intends to drill a well is irrigated by a pivot system. You own 160 acres in Section 1 irrigated by a pivot system. The operator intends to drill a well in the middle of your pivot and plans to utilize 4 acres for the well pad. During the drilling and completion of the well you will not be able to use your pivot system as intended, thereby affecting the entire 160-acre tract. The measure of damages in this instance should include the loss of use of the entire tract, loss of crop production and the inconvenience in the actual use of the land as it relates to the value of the land, among others things."

Q. "What about some other factors that may happen in the future such as pollution?"

A. "The measure of damage within the agreement should only include the normal damages caused by the drilling of the well and installation of a well pad and access road. That is to say, no future and extraordinary damages such as loss of livestock, fire damage, pipeline damages and damages resulting from spillage or any contamination or pollution of the soil or water supply are included and should be specifically excluded in the agreement. You should also request that, after completion of drilling, the well site be reduced in size significantly to lessen the future impact to your property. The operator should not be allowed to use your water unless they pay. They should be required to install tin horns at any waterways or low water crossings and must rebuild terraces that are destroyed so as to prevent erosion. The operator should be required to build the lease road to your specifications and maintain the same for the life of the well. Fences and gates should also be built, installed and maintained according to your

specifications. Remember, this is your property and they are mere tenants for all intent and purpose. The top soil they turn over should be stockpiled to use when the property is restored after the well is plugged and abandoned. During restoration the operator should be required to put the property back to its original condition so that you would never know they had been there. They should also accommodate you with regard to the location of the production equipment, tank batteries, etc. And as we all know, hunting and fishing is a big recreational activity in western Oklahoma and even though a property is leased by the operator to extract minerals, it does not include any hunting or fishing privileges. It is the landowners discretion to allow or prohibit anyone including the operator to hunt or fish on the property, or, to establish a separate hunting lease. In special circumstances landowners may also be able to restrict the operator's access for drilling, reworking, etc., to non-hunting season."

Q. "Luke, you mentioned several times in your talk that the negotiation process of determining the measure of damages and how they are to be corrected or compensated can include some "Little Extras." For the benefit of our landowners who subscribe to "Your Side of The Fence," can you explain what you mean?"

A. "After the amount of damages is calculated and agreed upon by all parties, landowners can then negotiate the "Little Extras." These extras will not appear on your Surface Use and Damage Agreement; and the CEO of the operator of the well will most likely never know they exist. The only place you will find these "Little Extras" will be in the operator's field hand's written notes and the inbox of your email.

It's important for folks to understand that when the field hand approached you initially to drill a well on your property he was likely in a hurry. The well next door will be ready to move in 30 days and his higher ups are demanding that he get the next spot

secured yesterday, but they won't allow him to pay you more damages than what your neighbor agreed to take. So, in order to get the deal done under budget they will agree to make some improvements to your property with the crew that will be on site in a few days to start pushing dirt. Here are some examples of the "Little Extra" improvements that can be done. If you have a dam that busted, ask them to fix it. If you want them to rip-rap your existing dam with some of the larger rock they unearth, just ask. If you want them to bulldoze the old farm home on your property, just point. Let's say you're an avid deer hunter and you want a food plot planted, just tell them where you want it located and what seeds to plant. Often, the operator can do these tasks with very little expense and can go a long way to appeasing you, the land owner.

In short, when dealing with an operator who wants to drill a well on your property and you need some improvements done, just ask. What's the worst that could happen? They say no?"

What with new innovations in extraction techniques, Oklahoma's oil and gas industry is developing areas within the state that have never been developed previously. Similarly, these new techniques such as horizontal drilling are bringing new life into geologic formations that were thought to have been fully exploited. If you are one of the landowners who gets a knock on your door by an operator wanting to drill, here are two bits of advice:

1. Do some research and speak with people who know what your rights are for surface damages, and
2. Don't be afraid to ask for some "Little Extras."

Who knows, you might end up with some improvements that will greatly benefit the wildlife inhabiting your property for you and future generations to enjoy.

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