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NORTH DAKOTA STATE UNIVERSITY

MINERAL RIGHTS

Should The Landowner Sell?

St. Paul, Minn.

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and
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Selling of mineral rights is a difficult question which each landowner should study carefully. The usual reason for selling is to obtain immediate cash.

Sale of mineral rights, however, has several disadvantages for the landowner, which he should think over in relation to the offered price before he decides.

The situation is different for each landowner and is continually changing with changing conditions. Because of this, only a few general guides are suggested here to help the landowner to decide whether to sell, and the price to accept.

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SELL SPECIFIC MINERALS

If you decide to sell, try to sell rights to specific minerals, such as "rights to oil and gas," rather than "rights to all minerals" or "rights to oil, gas and other minerals."

By selling only oil and gas rights you may be able to keep your rights to lignite and other minerals which are, or may become valuable to you as a landowner. Many North Dakota farmers, for example, have home-use lignite mines on their property. In several instances, where such farmers sold a portion of the rights in all minerals, the purchasers later demanded a royalty on the lignite mined by the landowners.

Some mineral deeds are so drawn as to cover a stated portion of the "rights in all minerals except lignite," or "rights in all minerals, except lignite, sand, gravel, and gold." From the landowner's viewpoint, this may be more advantageous than selling rights in all minerals, although less desirable than selling rights to definitely specified minerals.

Inasmuch as fewer rights are transferred by deeds to specified minerals than are transferred by deeds to all minerals, they may not be able to command as high a price.

CONSIDER ROYALTY ASSIGNMENT

Investigate the possibility of selling oil and gas rights by royalty assignment rather than by mineral deed.

If the sale is by royalty assignment, you will retain the power to negotiate drilling leases with oil companies in the future and to receive all bonus and rental payments. As indicated previously, the division of legal control over mineral rights among several parties may make it more difficult for oil companies to secure leases.

Because the purchaser of a royalty assignment does not obtain the right to participate in bonus and rental payments, royalty assignments generally do not sell for as high a price per acre as do mineral deeds. In fact, brokers report that the present market for

royalty assignments is very poor, except in ⁰UNU vicinity of existing oil fields.

AVOID SELLING ALL YOUR OIL AND GAS RIGHTS

In most cases, landowners probably will find it to their advantage to sell not more than half of their oil and gas rights, although under some conditions it may be advantageous to sell up to three-fourths of them.

Reasons why landowners retain part of their oil and gas rights include the desire to receive part of any future lease and royalty payments and to participate in negotiations for any oil and gas leases. This is to enable them to get provisions in leases which protect their surface rights.

Another possible reason for retaining part of the oil and gas rights is the maintenance of the loan-security status of the land. Studies in Oklahoma and Texas point out that most credit agencies operating in those states, as a result of experience with the problem, require at least 50 percent of the mineral rights to stay with the surface rights in order to qualify for a maximum loan. Whether this requirement will be adopted by credit agencies in North Dakota remains to be seen.

It is especially dangerous for the landowner to sell his rights in ALL MINERALS or his rights in coal and lignite, without making adequate provision for protection of the surface, and for compensation for use of the surface or for damages thereto. It is equally dangerous to purchase land where rights in coal, lignite, or all minerals have been severed from the surface without such provisions being made.

Recent research in utilization of lignite indicated a great expansion of lignite mining ultimately will be possible in North Dakota. Present strip-mining methods destroy practically all of the agricultural value of the land. If the landowner does not own the coal and lignite rights -- as would be the case if he sells rights in all minerals -- some mining company may acquire these rights and start stripping operations, or threaten to do so. In that event, the rights and remedies available to the landowner would

depend to a large degree on the provisions of the grant or reservation which severed the mineral rights from the surface rights.

CONSIDER FUTURE COSTS

Don't sell your oil and gas rights for an amount less than a reasonable estimate of the future costs and disadvantages you can expect from the sale.

One disadvantage of selling oil and gas rights is that you lose at least part of any bonuses, rentals, and royalties you might be paid by lessees in the future. The probable amount of these future payments you will lose depends upon the proportion of the mineral rights sold, the wording of the deed conveying these rights, the amount of drilling activity in the area, whether oil or gas is actually found, the future leasing policy of oil companies in the area, and other factors.

Another disadvantage is, you will incur a risk of increased costs for bringing the abstract up to date, should you wish to sell or mortgage your land in the future. Many of those who are buying mineral rights in North Dakota are reselling part of what they buy in numerous small parcels. In some cases, these parcels are as small as one-eighth of 1 percent of the total mineral rights in a tract. Thus, resales by mineral buyers may result in anywhere from two or three to over 100 separate chains of title to various interests in the total ownership of the tract. Under present procedures, all of the recorded instruments in each chain of title to mineral rights are included in the landowner's abstract of title, the cost of which is directly proportional to the number of recorded instruments. Although speculation in mineral rights is relatively new in North Dakota, landowners already are beginning to complain of the increased abstracting and title-examination fees resulting from fractionalization of mineral rights.

A third problem is, if you sell part of your mineral rights by mineral deed, you risk the possibility that subsequent fractionalization of the part you sell may proceed to the point where it would be so expensive for an oil company to negotiate with the many scattered owners that it would refuse to lease the

tract. This would reduce the income value of the mineral rights retained by you. Such situations are not uncommon in the older oil-producing states and they may be expected to occur in North Dakota.

In order to offset the loss of future income from drilling leases, and to fully protect yourself against all possible risks, you would have to receive at least as much per mineral acre for your oil and gas rights as the long-time or "normal" agricultural value of your land per surface acre. Many landowners will not adhere strictly to this rule, because of other considerations discussed in the next paragraph. But this rule does provide a good basing point from which the landowner can figure what price he will accept for his mineral rights. It calls attention to the fact that the risks assumed by the landowner in selling mineral rights are greater with high quality farm land than with low value land.

HOW BAD DO YOU NEED READY CASH?

Give consideration to the amount of your indebtedness and need for ready cash in deciding the lowest price you will accept for your oil and gas rights.

Some farmers, for example, have found it advantageous to sell part of their minerals at moderate prices in order to obtain funds with which to pay off mortgages, to fix up their homes, or to buy additional farm equipment. In their judgment, the immediate savings in interest costs or the advantages of having adequate working capital for farm operations offset to some extent the risks of future costs and inconveniences associated with selling mineral rights, discussed above.

The heavily encumbered landowner can ill afford to take the risks inherent in holding out for high mineral prices. The debt-free farmer, on the other hand, is in position to consider holding for higher prices than those currently offered in his locality. If he does decide to hold for higher prices, however, he should recognize the speculative risks he is assuming.

SELL WHEN PRICE IS BEST

Hedge during drilling operations on your land or on an adjoining tract. During the several weeks' period that a well is being drilled, the market price for oil and gas rights on that tract and adjoining tracts usually rises rapidly, often as high as 10 to 20 times the agricultural value of the land. To get as much as possible out of your mineral rights watch the local market very carefully during the drilling period. Attempt to time the sale of part of your oil and gas rights when competition has forced the price to high levels. If the well proves to be a dry hole, the market for minerals in that locality, even at low prices, may almost disappear.

Selling part of your oil and gas rights at these high prices is a "hedge" against a dry hole being drilled. If the well comes in as a producer and the landowner has held back half of the mineral rights, the landowner may still receive a nice royalty income.

CONSULT YOUR LAWYER BEFORE SELLING

Finally, always consult your attorney before signing away any of your rights. An attorney's fee is small compared with the possible savings in dollars and trouble his services can mean to you.

Some instances have been reported of landowners signing deeds to mineral rights under the mistaken impression they were signing oil and gas leases. Frequently, the price received was only a small fraction of current market values. If these owners had followed the practice of obtaining competent legal advice before signing any instrument affecting their land titles, these costly mistakes might have been avoided.

Similarly, if you are about to buy land, consult your lawyer regarding mineral rights which might be reserved and which might be exercised in such a manner as to cause you loss or damage.

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