

# Know your wind rights

By ANN TONER

**W**HAT do you do if someone shows up on your doorstep wanting you to sign an agreement for them to include your property in a proposed wind farm? Don't take the money and run. An agreement could affect your property, its value and your heirs.

Instead, listen and refuse to be rushed. Take the offered agreement to a lawyer for analysis before you sign anything, advised a panel on wind energy and landowner rights at the recent Nebraska Wind Energy Conference.

Wind power is a very popular concept right now. Consequently, there's a land rush on to secure rights to the best locations for future wind farms.

Some of the wind representatives knocking on doors work for wind energy developers with a proven track record for wind farm development. Others are "bundlers" who are trying to amass the wind rights in an area so they can resell them to an investor. The investor might want to build a wind farm or sit on those rights and speculate on their future worth.

A landowner who has his or her wind development rights tied up in a long-term agreement going nowhere isn't at liberty to take a better offer later on, says John Hansen, Nebraska Farmers Union president. One couple he knows of sold their wind rights for the next 55 years for \$1,000.

"Know the details before you sign," Hansen says. "Many contracts give all future control to the developer."

## Check it out

"Start by checking out the developer," suggests Bradley Haight, an attorney for Hackstaff Gessler LLC of Denver. He keeps a list of "good and bad" in his office. "If they don't know what they're doing, you'll never see a dime." (E-mail Haight at [bhaight@hackstaffgessler.com](mailto:bhaight@hackstaffgessler.com).)

Landowners should not fixate on quick money, says Haight. It takes from three to 15 years to get a wind project built. The possibility that one or more wind turbines may be located on your property, even if you signed an agreement, is less than 10%.

Haight says a proper wind contract may have a hundred items on it. It may run 30 to 100 pages. "Read the fine print," he says.

Haight says you may want to set some development milestones. "Require them to put up meteorological towers [to collect specific wind data from the site] and initiate studies. That helps the chances of building on your site," he says.

## Safety in numbers?

David Levy, an attorney with Baird Holm LLP in Omaha, says landowners have more leverage with a wind developer if they band together. It may be difficult for farmers, who are rugged individualists, to agree to a deal worked out by a committee, he says.

Wind turbines are just one part of the electricity generation picture, Levy says. There are substations, transmission lines, cables, access roads and possible interference with normal farm activities, maybe even the annoyance of the sound from turbine blades rotating or the light occasionally reflecting from them. If you're part of a group, you could share in the rewards even if your neighbor's land is the better wind location.

Levy says landowners may want a provision that terminates the agreement if there is no wind development action on their land within five years.

## Cover your exposure

Jeff Kirkpatrick, an attorney with McHenry, Haszard, Hansen, Roth & Hupp PC LLO of Lincoln, says whether you are entering a wind agreement as an individual or part of a group, make sure you're covered by insurance, and spell out whose insurance is responsible for everything.

Stipulate a time period for wind generation to operate on your land. Specify decommissioning procedures, such as tower and building removal, and land restoration.

Spell out land access for crops, grazing and hunting during the interim.

"Evaluate the contract with the possibility that you might be dealing with someone else in a few years," advises Kirkpatrick. "Always think of the worse-case scenario. If it can go wrong, you don't want to be the one holding the bag."

