De-mystifying water and wind laws

by Ron Dahlgren

Let's face it, if you're not a lawyer, legal matters almost always seem to be written in some unfathomable, extinct foreign language. And that may be especially true when trying to fathom water and wind energy laws. That's why Shannon Ferrell, Oklahoma State University associate professor of agricultural law, undertook the task of trying to de-mystify Oklahoma water and wind laws.

Water

"We developed the Oklahoma Water Law Handbook," Ferrell said. "Essentially, it's a primer on what landowners need to do if they need to get a permit from the Oklahoma Water Resources Board (OWRB).

"Producers will often have questions about water running across their land and how much control or ownership of it they have, especially when they want to build a dam and create a pond," he said. "For a stream, you have domestic use of that water for your household and for livestock at the standard stocking rate of the land around that water. Beyond that, if you want to irrigate or water a feedlot, for instance, you have to go to the OWRB and get a permit. If you want to use a dam to capture water, you have to consider how that dam will affect downstream landowners, and whether a permit will be required for the dam itself."

There are similar rules for groundwater.

"It's a confusing area, and we hope the water handbook helps reduce some of that, or at least lets producers know that they need to ask questions before they embark on a water use project," Ferrell said.

The handbook is available at local cooperative Extension offices, through the print-on-demand system or at oguacts.okstate.edu. Then search for the Oklahoma Water Law Handbook.

Wind

The Oklahoma Wind Energy Law Handbook is currently being developed and is expected to be available at the beginning of 2011.

"This is a new area for Oklahoma landowners. Most of them are familiar with the leases offered by oil and gas companies, but a wind-energy lease is a different animal," Ferrell said. "It's about 60 pages in length, which is quite a bit to digest. The handbook will help landowners focus on five key questions they need to have answered before they consider signing such a lease."

Question one: How will the lease affect your use of your property? What can you still do on the land, what are you not allowed to do and what economic benefits can you still retain?

Question two: What is the length of the lease?

"Most are now about 50 years, but there are extremes where leases can run for 99 years or even 150 years," Ferrell said.

Question three: What are the landowners' obligations?

"With an oil or gas lease, mostly you need to simply stay out of the way," Ferrell said. "For a wind-energy lease it's often the same, but there may be more restrictions, such as limits on the ability to lease the land or build structures upon it.

Question four: How will the landowners be paid?

"There are many compensation streams," he said. "There may be payments for the land lease, or maybe a royalty for the energy produced. With a standard oil lease, you get a three-sixteenths royalty. With wind, you may get closer to 4 percent, but of what?"

Question five: What happens when the lease is over?

"What are the lessee's obligations to restore the land to its prior condition?" Ferrell queried. "With the new Oklahoma Wind Energy Research Development Act, there are certain things that are required to be cleaned up, and bonds are required to be sure the funds are there to do that cleanup."

When completed, the Oklahoma Wind Energy Handbook will be available through local county Extension offices and via the Internet.