

Proposed New Lease Form Provisions

- 1. Royalty/Single Payor**
- 2. Unit Plats**
- 3. Lessee Reporting**
- 4. Force Majeure and Suspending Events**
- 5. Audit Access Rights**

Highlighted wording indicates changes from the current lease form.

Royalty and Single Payor

ISSUE:

- Current royalty provision is outdated and confusing.
- It is difficult to determine if the state has been paid in full when there are multiple payors and those payors use different payment methodologies.

PRESENT LEASE FORM:

- Contains the outdated concept of “posted prices”
- Is silent on the number of allowable payors

NEW LEASE FORM:

- Fair Market Value is based on NYMEX or other specified indices for oil
- Fair Market Value is based on Bloomberg, Platt’s or other specified indices for gas
- Disallows deductions for marketing fees
- Adds “less salvage value” as part of plant depreciation
- Clarifies which costs of operating and maintaining the plant are deductible from royalty
- Requires Lessee to designate one payor for each individual property formed under the Lease
- Provisions are similar to a provision in the current operating agreement form

PROPOSED WORDING FOR PROVISION:

6. **Royalty:** Unless Lessor elects to take in-kind all or any part of the portion due Lessor as royalty on minerals produced and saved hereunder, which option is hereby expressly reserved by Lessor pursuant to La. R.S. 30:127(C) or any successor statute and which is to be exercised by written notice by Lessor to Lessee at any time and from time to time while this Lease is in effect and either prior or subsequent to acceptance by Lessor of royalties other than in-kind, it being understood that nothing contained in this Lease shall ever be interpreted as limiting or waiving said option, Lessee shall pay to Lessor as royalty:

(a) _____ of the value, as hereinafter provided, of all oil, including condensate or other liquid mineral, produced (“produced” includes sales, stored or traded in-kind) and saved or utilized by methods considered ordinary production methods at the time of production. The value of such oil sold to a non-affiliate or affiliate shall not be less than the fair market price. “Fair market price” may include one or more of the following: NYMEX, NYMEX + roll, either of the major Oil Market Centers (St. James, Cushing, Empire, or Argus) or any combination of Field Posted Price, plus Platt’s P+, plus any market adjustments or, if at a future date the Fair Market Valuation changes to something other than those listed above, the new method of Fair Market Valuation may be considered and/or utilized.

Lessee shall not make any deduction whatsoever for the cost of any operation, process, facility, or other item considered to be a production function or facility at the time such oil is run. Without limiting the foregoing sentence and without regard to classification as production costs or otherwise, the following costs are not to be deducted from the value of production: (1) costs incurred for gathering, moving, or transporting production in the field; (2) costs incurred for handling, treating, separating, fractionating, or in any way processing production to make it

marketable by methods considered ordinary at the time such oil is run; (3) the cost of storage on the Lease or in the field; (4) marketing fees, any other miscellaneous fee, or unspecified discounts and/or subtractions from the base price incurred during or related to the sale of oil by the Lessee, affiliate, or non-affiliated party; and (5) line loss. The performance of any producing function or any function mentioned within clauses (2) and (3) of the foregoing sentence at a commingled facility in or outside the field in which this Lease is situated shall not make the cost of any such function deductible.

If Lessee delivers such oil at a point outside the field in which this Lease is situated by means of facilities belonging to a non-affiliated party, Lessee may deduct from the value of such oil a reasonable sum, not in excess of actual costs as evidenced by invoices from the transporter(s)), for the transportation from the field boundary to the point of delivery. If such transportation is by means of facilities owned by one other than a non-affiliated party, Lessee may deduct the actual cost of such transportation, but only if such cost is no greater than the fair market value of the services performed. If actual cost is greater than fair market value, the fair market value shall determine the amount deductible; however, if the facilities used are regulated as a common carrier by a state or federal regulatory agency, the authorized tariff chargeable for the services rendered and paid by Lessee shall be deemed the fair value of such services. If such transportation is by means of any facilities owned by Lessee, Lessee may deduct from the value of production a reasonable sum for such services, computed as follows: the amount deductible shall include only (1) the direct cost of operation and maintenance, including costs of labor, direct supervision, fuel, supplies, ordinary repairs, and ad valorem taxes; and, (2) depreciation of the facility computed over the estimated life of the field or the reserves.

If Lessee receives any compensation for any function or process for which Lessee is responsible to Lessor without right to deduct costs, including, but not limited to: (1) handling, gathering, or transporting such oil; or (2) treating or processing such oil by ordinary methods to make it marketable, the amount of such compensation shall be added to the value of such oil when computing royalties. If Lessee is deducting costs for any functions for which it is also receiving compensation, deductions may be made only to the extent they are in excess of any such compensation.

(b) _____ of the value, as hereinafter provided, of all gas, including casinghead gas, produced (“produced” includes sales, vented, stored, interLease sales, and utilized gas), sold and stored, saved, or utilized by methods considered as ordinary production methods at the time of production. The value of such gas sold to a non-affiliate or affiliate or vented or gas utilized by Lessee in the field shall not be less than the fair market price. “Fair Market Price” may include one or more of the following: a pipeline index in the field or adjacent to the field, Bloomberg Liquified Petroleum Gas Prices, Platt’s LP Gas Wire, NGCH published in the “Foster Natural Gas Report”, a NYMEX closing price, a Henry Hub price, plus/minus premium, and/or transportation outside the field or, if at a future date the Fair Market Valuation changes to something other than those listed above, the new method of Fair Market Valuation may be considered and/or utilized.

Except as expressly permitted herein, Lessee shall not make any deduction whatsoever for the cost of any operation, process, facility, or other item considered to be a producing function at the time such gas is produced. Without limiting the foregoing sentence and without regard to classification as production costs or otherwise, the following costs are not to be deducted from the value of production: (1) costs incurred for gathering, moving, or transporting production in the field; (2) costs incurred for dehydrating, decontaminating (as with an amine plant inside the field), fractionating, or in any way processing production to make it marketable by methods considered ordinary at the time such gas is produced; (3) marketing fees, any other miscellaneous fee, or unspecified discounts and/or subtractions from the base price incurred during or related to the sale of gas by the Lessee, affiliate, or non-affiliated party; or, (4) line loss. The performance of any producing function or any function mentioned in clause (2) of the foregoing sentence at a commingled facility inside or outside the field in which this Lease is situated shall not make the cost of any such function deductible. Without regard to classification as production costs or otherwise, Lessee may deduct costs incurred for compression of gas at a point in or adjacent to the field for insertion into a purchaser's line or into a line owned by Lessee or a carrier for transportation to a point of delivery outside the field.

If Lessee delivers such gas at a point outside the field in which this Lease is situated by means of facilities belonging to a non-affiliated party, Lessee may deduct from the value of such gas a reasonable sum, not in excess of actual costs as evidenced by invoices from the transporter(s), for transportation from the field boundary to the point of delivery. If such transportation is by means of facilities owned by one other than a non-affiliated party, Lessee may deduct the actual cost of such transportation, but only if such cost is no greater than the fair market value of the services performed. If actual cost is greater than fair market value, the fair market value shall determine the amount to be deducted. If such transportation is by means of any facilities owned by Lessee, Lessee may deduct from the value of production a reasonable sum for such services, computed as follows: the amount deductible shall include only (1) the direct cost of operation and maintenance, including costs of labor, direct supervision, fuel, supplies, ordinary repairs, and ad valorem taxes; and, (2) depreciation of the facility computed over the estimated life of the field or reserves.

If Lessee receives any compensation for any function or process for which Lessee is responsible to Lessor without right to deduct costs including, but not limited to: (1) gathering or transporting such gas; or (2) dehydrating, decontaminating, or in any way processing production to make it marketable, the amount of such compensation shall be added to the value of such gas when computing royalties. If Lessee is deducting costs for any functions for which it is also receiving compensation, deductions may be made only to the extent they are in excess of any such compensation.

(c) In addition to the separation of condensate or other liquid mineral from gas by ordinary production methods (as to which Lessor shall receive royalties above provided and for which separation no charge may be made by Lessee), gas produced hereunder, including

casinghead gas, may be processed in a gasoline or other extraction plant in or serving the field, and products may be recovered therefrom either directly by Lessee or under prudently negotiated contracts executed by Lessee. If Lessee enters into a prudently negotiated contract for the processing of gas with a non-affiliated party or parties under which such party or parties retain in-kind a portion of the products recovered from or attributed to such gas, in lieu of processing fees, the in-kind portion of the products kept as the processing fee must be reasonable and prudently negotiated, just as any processing fee must be reasonable and prudently negotiated. Lessee shall be held accountable for royalty due on excessive in-kind retention. Lessee shall pay royalty on residue gas sold as detailed for gas sold in paragraph 6(b) based on the value, as hereinafter determined, of Lessee's share of such products under such prudently negotiated contract. Residue gas is defined as: all plant source gas delivered by a producer for processing, less shrinkage due to liquid extraction, fuel required for plant equipment necessary for liquid extraction, flare gas, and unavoidable losses. In all other cases Lessee shall pay the royalty provided for gas in paragraph 6(b) based on the value, as hereinafter determined, of the total products recovered, after deducting therefrom the costs of processing as specified below.

The price or prices received by Lessee if the products are sold to non-affiliated party or parties, under a prudently negotiated contract or contracts, notwithstanding any other language or provision in this document, it is herein provided, and all parties agree, shall not be less than a fair market price - which may exceed index price - as may be determined, upon audit, utilizing the criteria in the succeeding paragraph, subject to the right of the State, as original Lessor, to verify that fair market price was paid upon audit.

If such products are sold to an affiliated party under a prudently negotiated contract or are sold to one other than a non-affiliated party under a contract which would not have been considered prudently negotiated if executed by a non-affiliated party, the value of the products shall be the fair market value as detailed above. The value of any such products (or Lessee's share thereof) not sold under any contracts shall be the fair market value at the plant for such products, or if no products are being sold at the plant, the average of the market values for like products of the same grade and quality at the three nearest plants at which such products are being sold but not less than the "Fair Market Price" as detailed above.

When the cost of processing is not met by retention by the processor of a share of the products or in any other case in which Lessee may deduct from the value of such products the reasonable and prudent costs of processing, the charges shall be determined as follows. If the gas is processed by a non-affiliated party under a prudently negotiated contract, the reasonable costs which may be deducted shall be those provided in such contract. In all other cases, including those where the gas is processed by an affiliated party and those in which the Lessee itself owns any part of the plant in which processing occurs, the combined value of the residue gas under Article 6 and the liquid or gaseous products resulting from such processing upon which the royalty is determined shall not be less than the royalty that would be due upon the

value (as determined under the provisions of Article 6(b) of the volume of the gas before processing, produced, saved, and utilized from the Leased property).

In all cases, the following costs are not to be deducted: any and all marketing fees incurred for the sale of the plant products and any costs for which the Lessee is reimbursed by another party.

In all other cases, including processing by those other than a non-affiliated party or parties and those in which Lessee itself or in conjunction with others owns the plant, the charges should be determined by contract between Lessee and Lessor. In the absence of such a contract, the charges to be deducted shall include only the proportionate part of: (1) the direct costs of operating and maintaining the plant, computed annually, including costs of labor and on-site supervision, shrinkage, materials, supplies, and ordinary repairs; (2) depreciation of the plant, less salvage value, computed over the life or lives of the field or fields served by the plant, or by such other method as is agreed upon by Lessor and Lessee; and (3) ad valorem taxes.

In all of the cases provided for in this paragraph, Lessor shall be entitled to the royalty for gas provided in paragraph (b) of this Article based on the value of Lessee's share of the residue gas sold or otherwise disposed of after processing.

In no case should total royalty on residue gas and liquids extracted be less than the royalty which would be payable at the Lease on the unprocessed gas.

(d) _____ of any and all other liquid or gaseous hydrocarbon minerals in solution and produced with oil or gas and saved or utilized which are not specifically mentioned herein, said royalties to be delivered or paid when marketed or utilized as is the accepted practice in such matters.

(e) In all cases, Lessor's royalty shall be calculated and paid after deduction of all severance or production taxes.

(f) The first payment of royalty shall be made within one hundred twenty (120) days following commencement of production from, or allocation of production to the Leased premises, except that in the case of any production from or allocable to the Leased premises, which has occurred prior to the date of but which is deemed to be covered by this Lease, Lessee hereby agrees to pay Lessor's royalty on all such prior production within one hundred twenty (120) days from the date of this Lease. Thereafter, royalty on oil, including condensate or other liquid mineral, produced and saved at the well by ordinary production methods shall be paid by the 25th of each month for production of the previous month; and royalty on gas, including liquids or other products extracted or processed from gas other than by ordinary production methods, or other liquid or gaseous mineral not specifically mentioned shall be paid on or before the 25th day of the second month following that in which produced or extracted or

processed. In the event any royalty payment is not correctly or timely made, the remedies provided by La. R.S. 31:137 through 142 or any successor statutes relative to notice, damages, interest, attorney fees, and dissolution shall be applicable, except that interest shall be payable thereon until paid without any requirement for prior written notice by Lessor to Lessee.

(g) Lessee shall be responsible for designating one payor of all royalties due under this Lease, per LUW code or Lease, in the event the Leased premises are not unitized in accordance with La. R.S. 30:9 and 30:10 or any successor statutes. Designation of a payor for each LUW code or Lease shall be made to the property section of the Mineral Income Division for the Office of Mineral Resources. If reporting and payments are not received timely and properly, then the payor, when designated, or Lessee, when no payor is designated, shall be subject to penalties, after notice, in accordance with La. R.S. 30:136(B) or any successor statute.

(h) Lessee shall report all production of hydrocarbons and associated liquid or gaseous minerals from, or attributable to, this Lease to the Production Audit Division of the Office of Conservation and to the Mineral Income Division of the Office of Mineral Resources by appropriate SR forms containing both the LeaseUnitWell (LUW) code and the well serial number. Failure to report production as herein specified shall be deemed "improper reporting" which shall subject Lessee to the penalty specified therefor.

Unit Plats

ISSUE:

Lessees are not providing surveyed unit plats to OMR in a timely manner, which are used to determine the State's royalty share

PRESENT LEASE FORM:

No penalty for Lessee's failure to furnish a surveyed unit plat

NEW LEASE FORM:

- No voluntary unit or pooling agreement shall be approved until a surveyed unit plat has been submitted to OMR
- Lessee must furnish a surveyed unit plat to OMR upon approval of Commissioner's unit within 90 days of initial production
- Provides for a liquidated damages penalty if plat is not provided

PROPOSED WORDING FOR PROVISION:

9. (a) Lessee may, with the consent and approval of Lessor, pool or unitize the acreage covered by this Lease (or any portion thereof), including in combination with other property or Leases (or portions thereof). Operations on or production of minerals from property other than this Lease within the pooled or unitized area, whether units created by the Commissioner of Conservation or by conventional agreement, shall have the same effect as if said operations or production had occurred on the Leased premises with respect to Lease maintenance within said pooled or unitized area. No unit or pooling agreement shall be approved by the Lessor unless a unit plat compiled and certified by a licensed surveyor showing the unit outline and each Lease or other property interest within the unit as having been surveyed accompanies and is attached to the unit or pooling agreement.

(b) Should Lessee apply or give notice of intent to apply to the Commissioner of Conservation for the creation of any unit or units which would include all or any portion of the Leased premises, Lessee shall furnish Lessor with a copy of the notice or application, accompanying unit plat, and all other attached information, either at the time the application is filed with the Commissioner or at the time required by applicable orders or regulations of the Commissioner for furnishing such information, to any parties entitled to receive it, whichever is earlier. If a unit or units including all or any part of the Leased premises are created by order of the Commissioner, Lessee shall submit to Lessor a survey plat of each unit or units so created, either prior to or within ninety (90) days of initial production from the unit. The survey plat of the unit or units must clearly identify the state Lease acreage, tract acreage, and the unit percentage participation for each state Lease tract. Failure to submit such a plat within the ninety (90) day period, and after notice of default, may result in a cumulative liquidated damage assessment against Lessee in the amount of one hundred dollars (\$100.00) per day being imposed, beginning on the ninety-first (91st) day after notice of default and continuing until the required plat is provided to Lessor.

(c) If a surface and/or subsurface agreement for drilling of a well is granted by the

Division of Administration, Office of State Lands, affecting this Lease, the Lessee shall furnish copies of all electrical and radioactivity surveys on the subject well to the Lessor. Further, a presumption shall exist, unless Lessee can reasonably demonstrate the contrary to Lessor, that a unit for the well should be formed to include a portion of this Lease, and Lessee agrees to form a unit either by a Voluntary Unit Agreement approved by the Board or make application to the Commissioner of Conservation for the formation of such a unit within six (6) months after the completion of the subject well.

(d) If on the date of this Lease all or any portion of the Leased premises is included in a unit established by order of the Commissioner of Conservation, Lessee agrees to pay royalty on all oil, gas, or other liquid or gaseous mineral produced and saved or utilized and attributable to the Leased premises from the date of such unit regardless of whether all development and operating costs chargeable to the Leased premises have been paid.

Lessee Reporting

ISSUE:

OMR staff needs information and data about Lease operations to evaluate producing areas on Leases

PRESENT LEASE FORM:

Information has to be requested from Lessee

NEW LEASE FORM:

- Lessee is obligated to furnish information to OMR on first and all subsequent wells drilled
- Includes the data consistent with rights under R.S. 30:209.1
- Provides for a liquidated damages penalty to ensure compliance

PROPOSED WORDING FOR PROVISION:

10.(a) Upon request by Lessor, Lessee shall furnish Lessor all of the following types of data: (1) all wire line surveys in open or cased holes including, but not limited to, all electrical and radioactive logs, porosity logs of all types and dip-meters, all in both 1" and 5" hard copy format and composite digital curve data in LAS or LIS; (2) directional surveys; (3) mud logs and core descriptions of both sidewall samples and conventional cores; (4) drill stem and production test data; (5) daily drilling reports to be supplied weekly; (6) paleontological reports; (7) velocity surveys including vertical seismic profiles; (8) all geological and geophysical survey data derived from surveys on the Leased premises and consistent with the rights of the State under La. R.S. 30:209.1 and under permits as set forth in La. R.S. 30:213 or any successor statutes; and, (9) production data, current and cumulative, including oil, gas, and water production, surface and subsurface pressures. Lessee shall also furnish Lessor with any other information and data requested by Lessor to keep Lessor fully informed that Lessee is complying with the provisions of this Lease in good faith, and developing and operating the Leased premises as a reasonably prudent operator for the mutual benefit of Lessor and Lessee.

(b) Nothing in this paragraph shall require that Lessee furnish or permit inspection of any interpretation of any of the types of data referred to above, and nothing herein shall be construed as requiring Lessee to secure any such data solely for the purposes of this paragraph. Lessor's representatives shall have access at all reasonable times to examine and inspect Lessee's records and operations pertaining to the Leased premises or lands pooled therewith.

(c) Failure to comply with any requirement in this section shall subject the Lessee, after notice, to liquidated damages in the amount of one hundred (\$100.00) dollars per day for each day of non-compliance starting on the sixty first (61st) day.

Force Majeure and Suspending Events

ISSUE:

Because of developing court decisions defining force majeure, it needs to be treated separately and differently from suspending events

PRESENT LEASE FORM:

Does not differentiate between force majeure and suspending events

NEW LEASE FORM:

- Splits force majeure and suspending events into separate sections
- Limits Lease maintenance due to either condition to 12 months
- Burden of proving a suspending event lies solely with Lessee

PROPOSED WORDING FOR PROVISION:

12. Force Majeure and Suspending Events: If at any time this Lease is being validly maintained under any of its provisions and Lessee is prevented from continuing acceptable development operations by the occurrence of a Force Majeure or Suspending Event (herein "Incident"), both herein below defined, and the Lessee cannot maintain this Lease beyond any critical date under any other operative provision of this Lease – such as the payment of annual rental, deferred development payments and/or semi-annual shut-in payments – then and only then shall that critical date be postponed on a day-for-day basis for so long as the effects of the Incident prevail.

The Board may recognize the Incident provided that the Lessee has submitted to the Office of Mineral Resources: (1) written notice of the occurrence within 90 days of the Incident onset; (2) an affidavit containing: (a) the onset date, description and nature of the Incident, (b) the effects preventing continuation of acceptable development operations, (c) the steps being taken to mitigate and eliminate those effects, and (d) an estimated time for resumption of acceptable development operations; (3) evidence of Lessee's diligent, reasonable and good faith efforts to mitigate and eliminate the effects of the Incident and resume acceptable development operations; and (4) any other information or documentation evidencing the existence of the Incident requested by the Board or its staff. The interpretation and operation of any term of this Force Majeure and Suspending Event clause are at the sole, reasonable discretion of the Board and/or its staff. Notice given beyond ninety (90) days shall be deemed unreasonable barring consequential extenuating circumstances.

The occurrence of an Incident alone shall not maintain this Lease in full force and effect for more than twelve (12) months from the date of the Incident onset unless extended by and at the sole discretion of the Board. The Lessee shall be required to submit written, detailed reports on a monthly basis to the Office of Mineral Resources which shall demonstrate the ongoing efforts by the Lessee to mitigate the effects of the Incident. If the reports are not submitted or if they do not identify good faith efforts to mitigate the effects of the Incident, the Board may declare the Incident recognition to be ended. If acceptable development operations cease prior to the Incident onset, are not caused by the Incident and the Incident

prevents the Lessee from re-establishing acceptable development operations prior to the critical date, then once the Incident and its affects end, the Lessee shall have the balance of time remaining prior to the critical date to re-establish acceptable development operations, unless the Lease is maintained under other terms of this Lease.

A Force Majeure event, as herein utilized, shall be defined as ~~an~~ a fortuitous event beyond Lessee's control and which is not ultimately determined to be the fault of Lessee nor due to Lessee's negligent or intentional commission or omission, or failure to take reasonable and timely foreseeable preventative measures which would have mitigated or negated the effects of the event. Generally, a Force Majeure event is: (1) a major storm, major flood or other similar natural disaster; or (2) a major accident such as a blowout, fire or explosion.

Suspending Events, for purposes of this Lease are: (1) the lack of availability, after Lessee has diligently, timely and in good faith attempted to secure same, of any required equipment and/or personnel, such as the specific type of rig or specific types of casing or drill pipe; or (2) the unreasonable delay by any government agency or political subdivision in granting permits necessary for acceptable development operations; or (3) an order of any Federal or State court of competent jurisdiction preventing acceptable development operations; or (4) the act of a third party, not under the control or at the instigation of Lessee, in shutting down and unreasonably refusing to reopen any facility through which hydrocarbons from the Lease are necessarily passed as part of production (and providing there is no other reasonably economical method of carrying on production); or (5) other events not described herein which are recognized by the Board or its staff.

Lessee's failure to comply with the explicit requirements of this Section pertaining directly to timely notification and monthly updates and additionally, demonstrate continuous good faith efforts to mitigate the effects of the Incident, shall prevent Lessee from using this Section to excuse any failure to comply with any obligation of this Lease relating to the particular Incident involved.

An increase in costs of performing the obligations set forth in this Lease shall not constitute circumstances beyond Lessee's control.

Lessee's financial inability to comply with any of the obligations of this Lease shall not be grounds for any extension of time.

Audit Access Rights

ISSUE:

Lessor's audit rights are not fully and clearly defined in the current Lease form

PRESENT LEASE FORM:

Audit rights are not explained in detail

NEW LEASE FORM:

- Clarifies the State's right to examine, audit, or inspect records necessary to protect the State's interests
- Lessee is obligated to use generally accepted accounting principles
- Provision is similar to a provision in the current operating agreement form

PROPOSED WORDING FOR PROVISION:

20. (a) Lessor, through the Office of Mineral Resources, shall have the right, at any time upon reasonable notice, to examine, audit, or inspect books, records, and accounts of Lessee pertinent to the purpose of verifying the accuracy of the reports and statements furnished to the Lessor, including all such information and documentation that that is reasonably relevant to the computation and payment of royalties or other sums due. The Lessee shall permit Office of Mineral Resources' personnel to examine all supporting books, records, and accounting systems at all reasonable times and intervals. Such books, records, and accounting systems must employ methods and techniques that will ensure the most accurate figures reasonably available. Lessee agrees to and shall use generally accepted accounting principles consistently applied in the preparation of same. In order to prevent the impairment of a Payor's continued business operations, all audit working papers, records, or any information provided by the entity being audited shall remain confidential to the extent allowed by law during the investigation and until the audit is complete. Once the audit investigation has been deemed complete by the Office of Mineral Resources, all audit working papers, records, and information obtained under this audit shall remain confidential to the extent allowed by law.

(b) In addition to all other audit rights otherwise set forth in this Lease or required by law, the Office of Mineral Resources' personnel shall have the same audit rights which the United States of America has under 30 U.S.C. 1713(a) and which the Louisiana Department of Revenue would have under La. R.S. 47:1542 through 47:1548 or any successor statutes.