



Proposed State Lease Form Update-The Saga Continues

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A revised draft of the proposed State Lease Form was posted to the Office of Mineral Resources webpage on August 2, 2016 and can be found via the following [link](#). The public is directed to submit comments to these proposed changes to the OMR Staff suzanne.hyatt@la.gov by August 31, 2016.

Prior to this time, the two remaining provisions being discussed between industry and the Mineral Board/OMR have been the post assignment liability of an assignor and records retention for royalty audit purposes. In the drafting process, industry, at one point, had obtained a provision whereby an assignor would remain responsible for obligations accrued prior to approval of an assignment, but not for those of its assignee thereafter. This was included in several drafts, including drafts recommended for approval by the Staff to the Mineral Board, but has since been removed. As for records retention, industry has sought a limited time period, or at least relief after an audit has taken place. However, with the new administration, and with new Mineral Board Members in place, additional changes to the proposed form have been made in the new draft posted.

With regard to the August 2, 2016 draft posted, your attention is directed to the following provisions which have been revised, in order of appearance:

- The definitions of “Restore” or “Restoration” [former Definition (I) Page 3] have been deleted. These definitions provided a convenient/consistent reference for the use of the terms, tied restoration to regulatory standards, and excepted changes due to normal erosion, settlement and topographical changes or changes caused by the lessor, third parties or acts of God. Instead, under Article 19, as revised, including Paragraph (A) thereunder, the lessee is required to restore the lease premises “as near as practicable, to the condition existing on the Effective Date of this Lease ...” For a number of reasons, including the effect of legacy lawsuit litigation on the industry in this State, this change needs to be opposed.
- Post assignment liability of an assignor remains an issue under Article 4(D).
- The definition of “Force Majeure” under Article 5(E) has been revised to delete a statement that a Force Majeure event “may include (1) a major storm, major flood or other similar natural disaster, or (2) a major accident such as a blowout, fire or explosion.” This language is in the current lease form. It may be that these events fit within the general Force Majeure definition, but given that the current form contains that specific language, now deleting it is questionable, especially given their routine and important use (e.g., Hurricanes Rita and Katrina).
- The royalty clause [Article 9]. A detailed discussion of this clause is beyond the scope of this update, but suffice it to say that ideally the royalty clause should provide certainty in how royalties are to be calculated (so royalties can be properly paid), match as much as

possible the way prudent operators in fact market production and be fair to lessor and lessee.

- Article 10 on Audit Rights still does not contain a specific records retention period, but the wording on requiring record retention has been softened.
- The change to Article 15(B) on Financial Security is consistent with mirroring financial security and bonding under the State Lease to that otherwise required by law.

At this point we do not know if there will be a special public meeting for comment either before or after the end of the comment period given, or when the form will be voted on for approval by the Mineral Board.

The Mineral Board has also been discussing the addition of a vertical (depth) pugh clause. As of yet this has not been added to the proposed lease form. It is unclear whether consideration will be given to adding it prior to adopting this form or at some later point in time.