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The Oil and Gas Lease, Part IV: Other Clauses

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The Oil and Gas Lease, Part IV: Other Clauses¹

by Christopher Kulander²

Introduction

This article is a review of clauses in an oil and gas lease that are not directly related to primary estate conveyance terms, pooling, property descriptions, or economic provisions such as bonus, lessor's royalty, delay rentals, and the like. This article covers topics including surface use clauses and riders, retained acreage and proportionate reduction clauses, and savings clauses such as continuous operations, surrender clause, force majeure, and shut-in gas royalty clauses. While sometimes considered "boilerplate" provisions that are common to all leases, these provisions vary widely and, as you will read, are anything but "boilerplate." The following is only a sampler of the wide variety of lease clauses encountered in modern lease.

The Operations Clause

Oil and gas leases typically last for a specified period of time—the primary term—and, possibly, longer if a condition is satisfied. The condition is that hydrocarbons must be produced, typically in "paying quantities," from the leased lands, or from lands pooled with the leased land. The condition remains satisfied so long as such production continues—*actual* production. Other clauses establish alternative ways the lessee can satisfy the production condition without actual production. These "other ways" are known as *constructive* production.

The operations clause, if satisfied, provides constructive production while "operations"—as expressly defined in the lease or by case law if not—are being conducted on the leased premises. The operations clause can be typically invoked in one or both of the following circumstances: (1) where the lessee is conducting operations at the end of the primary term; and/or (2) the operator commences operations during the secondary term after previous established production ceases. Clauses within an operation clause that cover the first circumstance are commonly called "well completion" clauses while those that cover the second circumstance are sometimes called "continuous operations" clauses.

Be forewarned! Operations clauses are commonly long and involved, weaving in many sub-clauses, elements, lists, and circumstances. Here are two examples:

Example No. 1:

If prior to discovery of oil, gas or other hydrocarbons on this land, or on acreage pooled therewith, Lessee should drill a dry hole or holes thereon, or if after the discovery of oil, gas or other hydrocarbons, the production thereof should cease from any cause, this Lease shall not terminate if Lessee commences additional drilling or re-working operations within sixty (60) days thereafter, or if it be within the primary term, commences or resumes

¹ Portions of this paper, updated as necessary, appear in JOHN LOWE ET AL., CASES AND MATERIALS ON OIL AND GAS LAW (7th ed. 2018). Multiple examples of lease clauses, and some text, were provided by Tom Daily. The author wishes to thank Tom Daily and George Snell for their assistance with this project.

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the payment or tender of rentals or commences operations for drilling or re-working on or before the rental paying date next ensuing after the expiration of sixty (60) days from the date of completion of the dry hole, or cessation of production. If at any time after sixty (60) days prior to the beginning of the last year of the primary term, and prior to the discovery of oil, gas or other hydrocarbons on said land, or on acreage pooled therewith, Lessee should drill a dry hole thereon, no rental payment or operations are necessary to keep the Lease in force during the remainder of the primary term. If at the expiration of the primary term, oil, gas or other hydrocarbons are not being produced on said land, or on acreage pooled therewith, but Lessee is then engaged in drilling or re-working operations thereon, or shall have completed a dry hole thereon within sixty (60) days prior to the end of the primary term, the Lease shall remain in force so long as operations are prosecuted with no cessation of more than sixty (60) consecutive days, and if they result in the production of oil, gas or other hydrocarbons, so long thereafter as oil, gas or other hydrocarbons are produced from said land, or acreage pooled therewith. In the event a well or wells producing oil or gas in paying quantities shall be brought in on adjacent land and draining the leased premises, or acreage pooled therewith, Lessee agrees to drill such offset wells as a reasonably prudent operator would drill under the same or similar circumstances.³

Example No. 2:

If, at the expiration of the primary term of this lease, oil or gas is not being produced from the above described land but lessee is then engaged in drilling operations, this lease shall continue in force so long as drilling operations are continuously prosecuted, and if production of oil or gas results from any such drilling operations, this lease shall continue in force so long as oil or gas shall be produced. If, after the expiration of the primary term of this lease, production from the above described land should cease, this lease shall not terminate if lessee is then prosecuting drilling operations, or within 180 days after each such cessation of production commences drilling operations, and this lease shall remain in force so long as such operations are continuously prosecuted, and if production results therefrom, then as long thereafter as oil or gas is produced from the above described land. "Drilling operations" includes operations for the drilling of a new well, the reworking, deepening or plugging back of a well or hole or other operations conducted in an effort to obtain or re-establish production of oil or gas, and drilling operations shall be considered to be "continuously prosecuted" if not more than 180 days shall elapse between the completion or abandonment of one well or hole and the commencement of drilling operations on another well or hole.⁴

³ AAPL Form 675 Oil and Gas Lease; Texas Form-Shut-In Clause, Pooling Clause (referred to hereinafter as "Texas AAPL 675 Lease").

⁴ This clause was taken from the oil and gas lease form adopted by the Arkansas Oil and Gas Commission for those integrated (force pooled) unleased mineral owners who fail to elect to participate in an integrated well or to be carried non-consent subject to the Commission's mandated risk factor penalty (referred to hereinafter as "AOGC Integration Lease").

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