

# The Oil & Gas Lease, Part IV—Other Clauses

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## 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:
  - where the lessee is conducting operations at the end of the primary term; and/or
  - the operator commences operations during the secondary term after previous established production ceases.
- Clauses within an operations 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.

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# What is “COMMENCEMENT” of a well?

- Most contested point: what are “operations”? What is “commencement”?
- General Rule: Any activity on the land directly related or preparatory to drilling constitutes “commencement” of a well or “operations for the drilling of a well”
  - “Spudding” not required by majority view
  - Beware the term “drilling operations” as it could be construed more narrowly to require actual drilling
- Actual drilling with a rig and turning bit is not required in Texas.<sup>1</sup> Thus, activities like road building, pad siting and construction, and other pre-drilling necessities typically count as “operations” unless the lease specifies otherwise.

<sup>1</sup>Whelan v. R. Lacy, Inc., 251 S.W.2d 175 (Tex.Civ.App.-Texarkana 1952, writ ref'd n.r.e.)

# The Shut-in Gas Royalty Clause

- Sometimes it may not make sense to produce from a completed well.
  - **OK** and **WV**: a shut-in well is still considered “producing” within the meaning of the habendum clause if it is **capable** of production in paying quantities.
  - **TX**: defines “production” as actual production, a well that is shut in for reasons such as waiting for a pipeline connection to make actual production possible will not maintain the lease.
- The shut-in clause: provides a substitute for actual production where there is a well capable of production on the leased premises.
- The shut-in clause effectively conforms the practice in states, like TX, to those in states, like OK, where capability of production is sufficient.

# The Shut-in Gas Royalty Clause

- Shut-in clause applies only where a lease is capable of actually producing in paying quantities.
  - That means that the well must have been drilled to total depth, completed, and made ready to produce with the flip of a switch
- The precise facts of performance & language of the shut-in clause are critical. If \$\$\$ isn't paid, is paid to the wrong party, is late, or deficient, the result turns on language of the shut-in clause itself.
  - If proper shut-in payment is a **condition** for, or a **special limitation** on, the continuance of the lease, then the lease terminates automatically.
  - On the other hand, if the language creates a **covenant**, then the lease generally does not terminate if payment is not made (or not perfectly made). The lessor can recover the payments and associated costs like legal fees.

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# The Force Majeure Clause

- Commonly seen in general business contracts. Replaces Doctrine of Force Majeure with the express language of the clause.
- In an **ogI**, the force-majeure clause often relates back to the habendum clause to provide a substitute for actual production. Generally, an ogI force-majeure clause will provide constructive production to maintain an ogI only if:
  - the event cited is defined as a force-majeure event by the clause,
  - lack of production is excused by the event defined as force majeure,
  - there is a causal relationship between the event defined as force majeure and the failure of production, and
  - the lessee gives timely notice, if the clause requires it.
  - Also, if the lessee *caused* the event, that's a bad look.

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First appeared as part of the conference materials for the  
2023 Fundamentals of Oil, Gas and Mineral Law session

"The Oil and Gas Lease, Part IV: Other Clauses"