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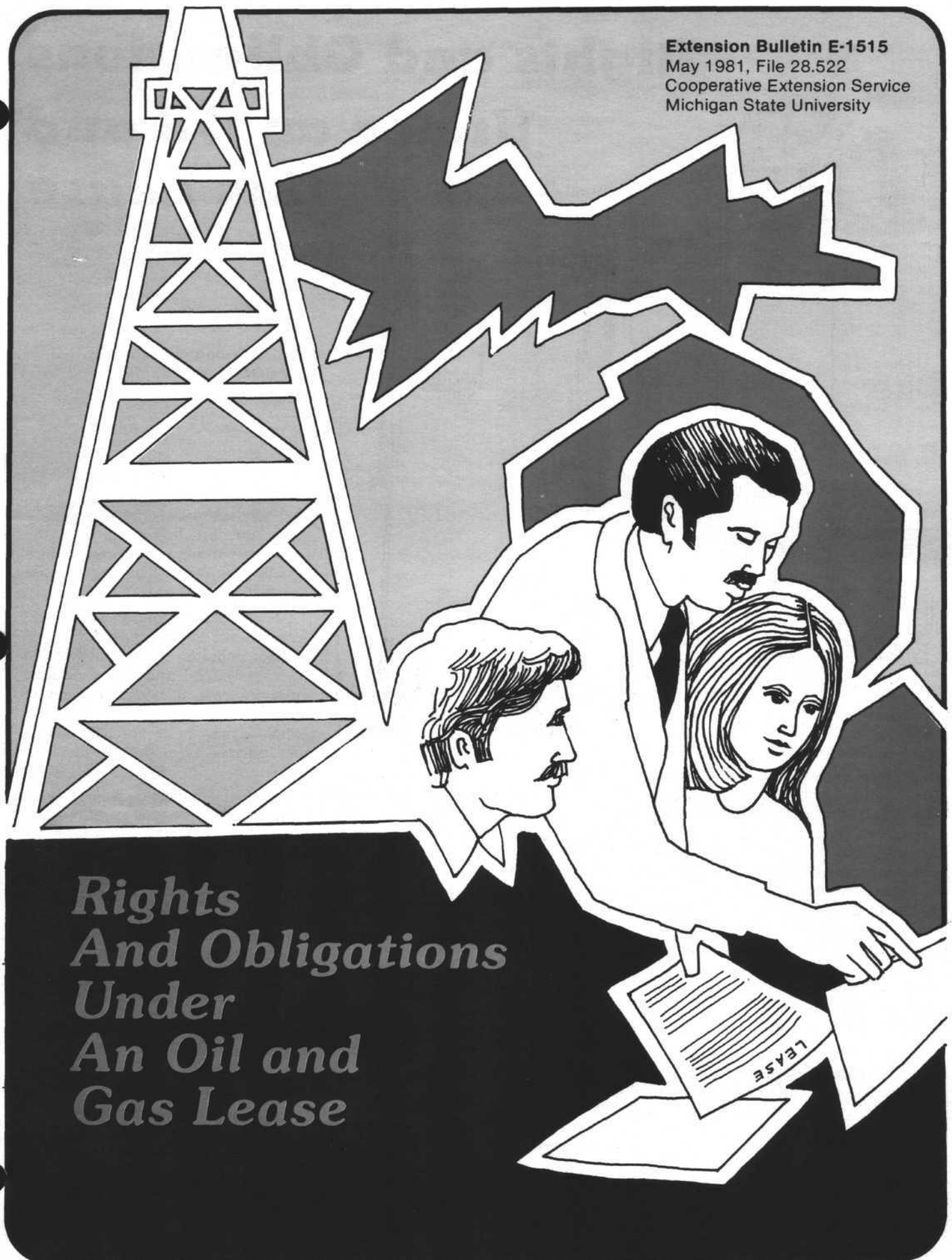
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Rights and Obligations Under An Oil and Gas Lease  
Michigan State University Extension Service  
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*Rights  
And Obligations  
Under  
An Oil and  
Gas Lease*

# Rights and Obligations Under an Oil and Gas Lease

By Veryl N. Meyers

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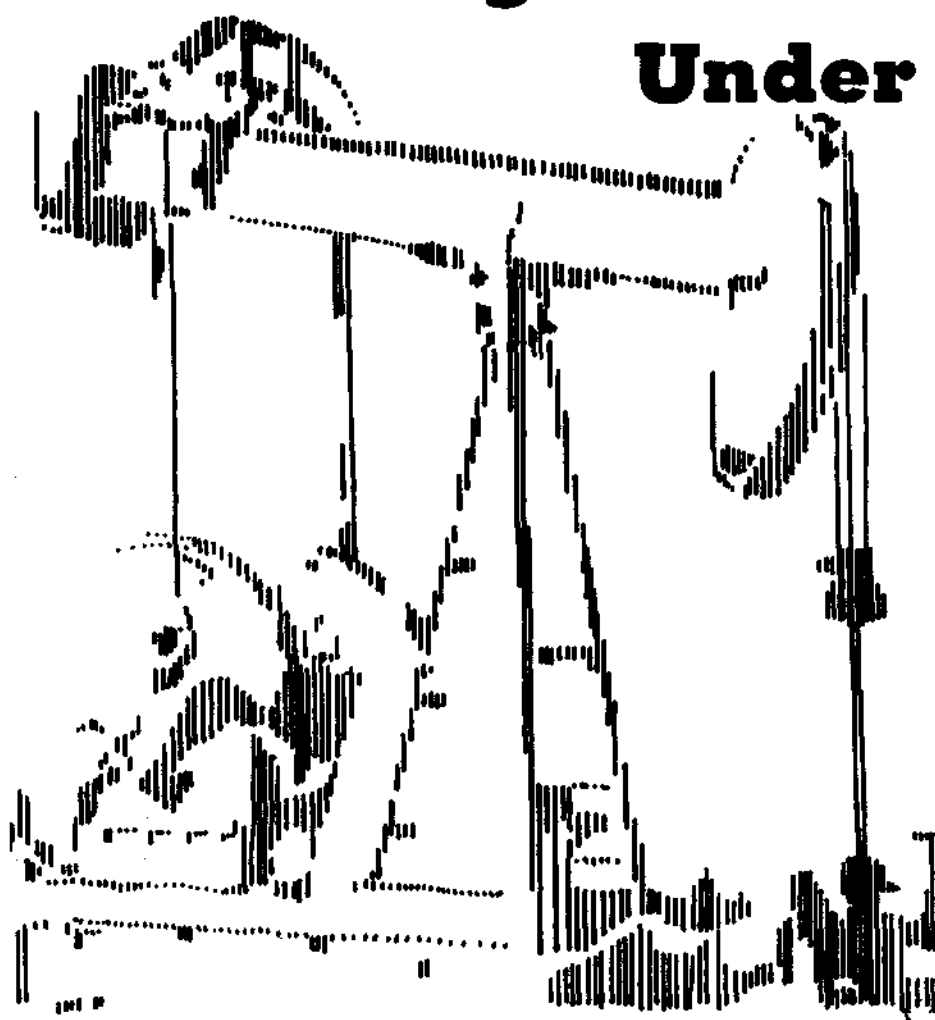
practically infinite, for the sake of simplicity this article covers only the most common types of interests which typically arise out of the lease relationship.

1. *Royalty Interest:* In oil and gas terms, royalty interest means the right of lessor under an oil and gas lease to share in the oil and gas produced under the lease, usually free of any of the cost of production. It is most frequently a  $\frac{1}{8}$  share of production and is often referred to as the "landowner's  $\frac{1}{8}$ ."

A royalty interest does not include the right to explore, drill for or produce oil and gas, the right to lease for those purposes, or the right to receive bonus or delay rental payments under the lease.<sup>5</sup>

2. *Working Interest:* The lessee's interest in an oil and gas lease, which includes the right to explore, drill for and produce under the lease, bears the entire cost of exploration, drilling and producing any oil and gas discovered.<sup>6</sup> It is frequently referred to as the  $\frac{7}{8}$  working interest, and like the other interests discussed may be conveyed in whole or fractional part.

3. *Overriding Royalty Interest:* An interest which is frequently carved out of the lessee's interest in an oil and gas lease (for example, a  $\frac{1}{16}$  or  $\frac{1}{32}$ ), which entitles the owner to a share of production and is free and clear of the costs of exploration, drilling and production.<sup>7</sup> An overriding royalty interest



Since oil was first discovered in Michigan in 1925, the oil and gas industry in Michigan has grown to an important segment of our economy. Latest figures show that in 1979 Michigan production amounted to 35 million barrels of oil<sup>1</sup> with a free market value of about \$1.3 billion, and 160 billion cubic feet of gas<sup>2</sup> with a controlled price value of approximately \$350 million. At the present time the State of Michigan realizes tax revenues on severance taxes alone in the range of \$50-60 million per year.<sup>3</sup>

In 1979 Michigan produced more than three times as much crude oil as in 1969, just ten years earlier, and four times the amount of natural gas as in 1969.

During the 1970's wells were drilled in 65 of Michigan's 68 Lower Peninsula counties and in one county (Chippewa) in the Upper Peninsula, with an overall success ratio of approximately 39 percent.<sup>4</sup>

Thus the growth in oil and gas exploration, production and transportation activities, and the increasing value of the product, brings an increasing number of non-industry lawyers into contact with the variety of legal problems and legal relationships associated with the often exciting and always challenging oil and gas industry.

## I. Lease— The Basic Contract

The oil and gas lease is the basic document which defines the relationship between the producer (lessee) and the landowner (lessor) and expresses the rights and duties of each. No effort is made in this article to cover the implied obligations of a lessee to market, prevent drainage and develop the leased lands.

### A. Definition of Terms

While the interests which may be created by skillful lawyers and astute non-lawyers in an oil and gas lease is

may be stated as a share of the entire production from the lease, i.e.,  $\frac{1}{16} \times \frac{8}{8}$  or  $\frac{1}{32} \times \frac{8}{8}$ , or it may be expressed as a share of the lessee's interest, i.e.,  $\frac{1}{16} \times \frac{7}{8}$  or  $\frac{1}{32} \times \frac{7}{8}$ .

The interest may fluctuate, depending on the amount of production from a well, i.e.,  $\frac{1}{16} \times \frac{7}{8}$ , when average daily production in any calendar month is more than 10 bbls. per well and  $\frac{1}{32} \times \frac{7}{8}$  when production is 10 bbls. or less.

Since the overriding royalty interest is carved out of the lessee's interest in an oil and gas lease, its duration is limited by the duration of the lease under which it is created.

**4. Production Payment:** A production payment is an interest generally carved out of the working interest in a lease which entitles the owner to an agreed share of the production from a well or wells until such time as the owner of the production payment receives a specified sum of money.

For example, the owner of a production payment may be granted  $\frac{1}{2}$  of the  $\frac{7}{8}$  working interest in a lease, free and clear of operating expenses until such time as his or her proceeds from production equal \$200,000 or some other agreed amount.

## B. The Granting Clause

The granting clause of a lease defines in general terms the extent of the rights granted by the lessor. Areas where lessor questions frequently arise include the right to conduct seismic exploration on the leased premises, the right to use the leased premises in conjunction with production from adjoining lands and the extent of the permissible use of the leased premises by the lessee in conducting leasehold operations.

**1. Seismic Exploration by Lessee:** The use of seismic technology as a tool for locating underground formations with oil and gas bearing potential is practically universal in present-day oil and gas exploration activities. The general rule is that even in the absence of express language in the lease granting clause, the lessee under an oil and gas lease is impliedly authorized to make reasonable use of the leased premises in the conduct of seismic operations.

Whether or not the lessor is entitled to payment for any damages caused to the leased premises by seismic operations will be governed by the terms of the particular oil and gas lease,

but in the absence of an express requirement for payment of such damages, courts have generally held that damages to the leased premises resulting from normal and prudent lease operations are not required.<sup>8</sup>

The right to undertake seismic exploration on the leased premises does not extend to the lessee of adjoining lands. The lessee of adjoining lands must obtain the consent of both the lessor and lessee of the subject lands, and if consent is granted, the lessor is entitled to demand compensation for the privilege.<sup>9</sup>

**2. Pipelines, roadways, storage tanks, etc.:** Generally the lease grants to the lessee all of the rights necessary to provide reasonable access to a proposed well site for drilling purposes. If the well is completed successfully, the lessee also has the right to continued access to the well by a roadway for production purposes, the pipeline easements reasonably necessary for the removal of the oil and gas, and the surface rights necessary for oil storage tanks, separator, compressor and other necessary leasehold equipment.<sup>10</sup>

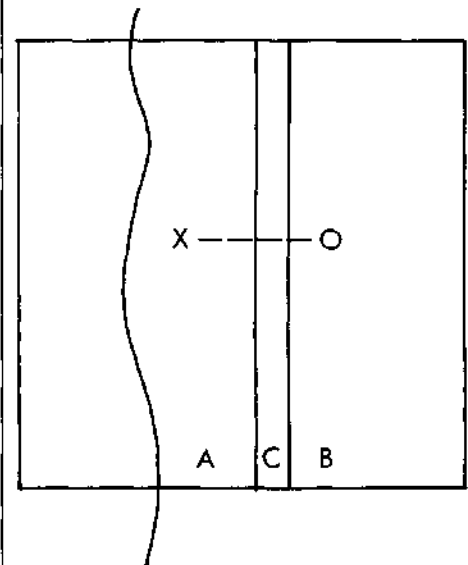
These rights are not unlimited, however; they may be circumscribed by: (1) The language in the granting clause of the particular lease; (2) the implied obligation of a lessee to act in a reasonably prudent manner and make reasonable use of the leased premises; and (3) the provisions of Public Act 61 of 1939 (particularly Sections 2, 5, 6 and 7) which grant the Supervisor of Wells, Michigan Department of Natural Resources, the power to protect lands from unnecessary damage or destruction.<sup>11</sup>

If a lessee proposes to use the surface of the leased premises in a manner which would result in unnecessary surface damage, the lessor has recourse to the Supervisor of Wells as well as to the circuit court. Thus in *Diamond Shamrock Corp. v Phillips*,<sup>12</sup> where a lessee drilling on a 640-acre gas unit located his well on a particularly valuable five-acre portion of the land, and where evidence showed that the well could easily have been drilled on a less valuable portion of the land, damages were awarded to the landowner for unreasonable use of the leased premises.

**3. Use to benefit other lands:** Most oil and gas leases do not authorize the lessee to use the leased premises for a roadway, compressor,

pipelines or for treatment or storage facilities which are to be utilized principally or solely for the benefit of lands within a drilling unit which do not include the leased premises.<sup>13</sup>

One problem which now occurs with some frequency as a result of environmental constraints on well locations is demonstrated by the following illustration:



In the above illustration, Tract A is the proposed 80-acre unit for a well to be drilled by the lessee of Tract A. Seismic exploration indicates that the optimum location for a well is at "X," which is approximately 250 feet from Big Trout Creek. The DNR has refused to grant a permit to drill at location "X" because of its potential for polluting Big Trout Creek.

The solution is to move the surface location of the well to "O," 1,000 feet to the East on Tract B, and to drill a directional hole which will bottom out at "X," the bottom hole location considered to be optimum.

The question is what rights the lessee of Tract A must acquire from the adjacent owners of Tracts B and C to permit the drilling of the directional well.

First we check title to Tracts B and C and find that Tract B is subject to an oil and gas lease, and that the owner of Tract B recently conveyed his mineral rights to Ivah Royalty. The lessee of Tract A must first acquire surface rights for the well from the owner of Tract B.

Next the lessee of Tract A should obtain permission for this location from the lessee of Tract B, since that lessee

may have been granted exclusive lease rights on Tract B, and in addition may have the legal right to prevent a well that could have the effect of draining Tract B of oil and gas.<sup>14</sup>

It is also desirable to obtain the consent of Ivah Royalty, since drilling a slant well on Tract B may result in a trespass on his mineral right. I have no reported cases on this precise question.

Next the lessee of Tract A should seek permission from the owner of Tract C to penetrate Tract C underground, since any penetration without permission would be a trespass from which the owner of Tract C could obtain injunctive relief.

Had we found Tract C to be subject to an oil and gas lease and having severed mineral ownership, the lessee of Tract A would also have to obtain permission from those parties.

Obviously this undertaking requires coordination, and your lessee of Tract A should consider taking options to the various rights initially, since refusal of any one party to grant permission would render the other rights acquired valueless.

**4. Lease from owner of less than 100 percent interest:** An interesting question arises when a lessee has obtained an oil and gas lease on lands



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from a lessor who is a co-tenant owning less than 100 percent of the oil and gas rights under the leased premises, but the lessee is unable to lease the remaining oil and gas rights in those lands.

For example, assume that a lessee has obtained a lease on Whiteacre from a lessor who does not own the surface, but owns one-half of the oil and gas rights in Whiteacre. The surface owner of Whiteacre owns the remaining one-half and refuses to lease under any circumstances.

The first question is whether the lessee may enter Whiteacre to conduct a seismic survey over the objections of the unleased co-tenant. The unleased co-tenant will argue that the conduct of both seismic and drilling operations on Whiteacre will result in waste to the property, and that waste by a co-tenant is prohibited under common law.

While court decisions have not been consistent on this question, the majority of courts have refused to enjoin a lessee who undertakes seismic exploration or drilling under a lease covering less than 100 percent of the oil and gas rights.<sup>15</sup> In Michigan there is at least one circuit court decision which adopts this view with respect to seismic operations.<sup>16</sup>

The reasoning of the courts following the majority rule is that a nonconsenting mineral owner cannot deny the mineral owner who wishes to lease from realizing the value of his oil and gas rights. The drawback of relying on a common law procedure is that the nonconsenting mineral owner does not share in the risk of a dry hole; if the well is successful, the lessee will be required to account to the nonconsenting mineral owner for his or her proportionate share of the production proceeds (after deducting his or her proportionate share of drilling and operating costs).

Michigan also has a statutory procedure (MSA 13.140(1) et seq.) under which a lessor who is a co-tenant, or a lessee from a co-tenant who owns more than 50 percent of the undivided oil and gas rights in a tract, may bring an action in circuit court to obtain the right to conduct drilling operations. Under this statute, a defendant has 15 days after a judgment becomes final in which to elect to join the drilling of the proposed well and pay his or her proportionate share of costs or provide a bond to indemnify those costs.

If he or she does not so elect, the nonconsenting party is entitled to a  $\frac{1}{8}$  royalty interest (unless a higher royalty is being paid under the other oil and gas leases covering the subject lands), and the party who has proposed the well may then proceed as though the full 100 percent interest is leased. This procedure is seldom used and is available only when the interests under lease are undivided interests in excess of 50 percent.

Another approach to the problem of drilling with less than a full interest under lease is for the lessee to file an action before the Department of Natural Resources under the compulsory pooling provisions of PA 61 of 1939, as amended (MSA 13.139(13)) and the Regulations pursuant thereto.<sup>17</sup>

The advantage of this procedure over the common law approach is that the regulations under PA 61 authorize the Supervisor of Wells to enter an order which allows the party who drills the well to (1) recover the nonconsenting party's share of costs out of  $\frac{7}{8}$  of his or her share of production, and (2) to recover such additional percentage of his or her costs as the Supervisor may deem appropriate compensation for the risk of a dry hole.

Thus if a well costs \$400,000 to drill and complete and the nonconsenting party's share of those costs is \$200,000, a penalty provision of 100 percent as compensation for risk would permit the operator to recover a total of \$400,000 out of the nonconsenting party's share of working interest proceeds before the nonconsenting party would be entitled to receive any working interest proceeds from the well. The nonconsenting party would be entitled to receive  $\frac{1}{8}$  of the proceeds from his or her share of production as royalty, not subject to drilling and operating costs.

It should be kept in mind that the compulsory pooling statute is not available for seismic operations and that the circuit court statutory procedure is not available if the nonconsenting mineral owner owns 50 percent or more of the undivided oil and gas rights in the premises to be explored, or if the nonconsenting owner owns the entire interest in a separate tract within the drilling unit.

**5. Mother Hubbard Clause:** The lease form appended as Exhibit A in-

cludes in its granting clause a "Mother Hubbard" clause which states that the lease shall include all "lands . . . contiguous or appurtenant to said described land and owned or claimed by lessor, whether or not specifically described above." The purpose of this clause is to prevent loss by inadequate or insufficient description of some tract or parcel considered a part of the leased premises at the time the lease was executed.

The "Mother Hubbard" clause has been upheld in numerous cases but the generally accepted principle is that the clause will be applied only where the adjacent or contiguous parcel is small in relation to the actually described tract, and was clearly intended to be included as a part of the lease description.<sup>18</sup> A careful title examiner for the lessee will require that the lessee obtain a correction of description wherever a material omission in the lease description becomes evident.

### C. Term Clause

Oil and gas leases generally are granted for a term of years referred to as the "primary term." The lease may be a "paid up" lease, i.e., the lease will continue for the entire primary term without further payment required of the lessee. Much more frequently, the lease provides for payment of annual rentals, known as "delay rentals," which must be paid to continue the lease in effect from year to year during the primary term. Under the term clause of the MAPL-2 oil and gas lease (Exhibit B) it is provided that:

**"It is agreed that this lease shall remain in force for a primary term of 10 years from this date and if lessee shall commence to drill within said primary term or any extension thereof, lessee shall have the right to continue drilling to completion with reasonable diligence;"**

Under this type of term clause a question frequently arises as to the precise meaning of the words "commence to drill." Michigan courts have followed the general rule that actual drilling is not necessary to constitute commencement, but that other activities which are part of a drilling operation (such as preparing the drill site, digging a slush pit, setting pipe and moving the drilling rig onto location) may be sufficient to constitute "commencement," provided the actual drilling of the well

is continued to completion with reasonable diligence.<sup>19</sup>

However, one Michigan case has held, in a split decision, that failure to secure a drilling permit prior to expiration of the primary term would terminate the lease even though other drilling operations had been commenced prior to the end of the primary term.<sup>20</sup>

In a 1972 Michigan case on the question of "commencement" of drilling operations, a well was drilled on lands adjoining the lease in question. The Michigan Court of Appeals held that commencement of a well on adjoining lands located within the same 40-acre spacing unit, prior to expiration of the primary term of a lease, constituted commencement of a well on the leased premises, even though the lease in question contained no pooling clause, the lands were not voluntarily pooled, and a compulsory pooling order applied for had not been issued.<sup>21</sup>

While the Court of Appeals may have reached a just result under the facts, neither lessees nor lessors should place great reliance on that decision as a precedent to guide future action.

Under the lease appended as Exhibit A, the primary term may be extended by "Operations" which are defined in paragraph 2 of the lease to include preparing the location for drilling.

Courts have generally held that a lease will terminate following the end of the primary term at such time as production in paying quantities has permanently ceased.<sup>22</sup> What constitutes permanent cessation of production will depend on circumstances in each case, but usually courts will be persuaded according to the length of time production has been discontinued, the reason for the delay, and the good faith and diligence exercised by the lessee in an effort to restore the well to production.<sup>23</sup>

In a number of cases, courts have held that where the term clause of a lease expressly sets forth a specific period of time (such as 90 days) within which operations which have been ceased may be resumed, any cessation for more than the specified period results in termination of the lease.<sup>24</sup> A contrary result was reached in *Sinclair v Bishop*.<sup>25</sup>

### D. Royalties

An oil and gas lease normally pro-

vides that the lessee shall be paid a royalty on oil and gas produced from or attributable to the leased premises. Usually the lessor is entitled to have the royalty oil (frequently  $\frac{1}{8}$  of the oil produced) delivered free of cost into tanks or into a pipeline connection on the leased property to which the well may be connected.

On gas produced the lessor is usually entitled to receive a share of the proceeds received from the gas sold at the well, or the same share of the market value of the gas at the well when the gas is sold off the leased premises.

A question that may arise concerning royalties is whether an unreasonable delay in making royalty payments entitles the lessor to terminate the lease.

In the absence of disputed title, most courts have held that a lessee is obligated to pay royalties within a reasonable time, but in the absence of bad faith on the part of the lessee, the remedy of forfeiture is generally denied. However, the Louisiana Supreme Court has held that a lease is forfeited for failure of a lessee to pay royalty for a reasonable period of time.<sup>26</sup>

Under a lease containing a "right to cure" clause (such as paragraph number 7 of Exhibit A) it is doubtful that even a Louisiana court would declare a forfeiture for delay in making royalty payments, at least until after demand had been made by the lessor and 60 days had elapsed without payment by the lessee.

### E. Shut-In Gas Well Royalties

Where a well is successfully completed which is capable of producing gas or both oil and gas, considerable time may elapse before the well operator is able to commence actual production. This delay may result from environmental restrictions against flaring gas to the atmosphere, the time necessary to negotiate a favorable price for sale of the gas, time required to obtain regulatory approval for the construction of the necessary pipeline, or the time necessary for the actual construction and connection of pipeline and, in some cases, processing facilities.

Under most leases, when a prolonged delay occurs in producing a successful well capable of producing gas, the lessor is entitled to receive shut-in gas royalties. The shut-in roy-



alty clause in Exhibit A is applicable to delays encountered in producing either oil or gas and provides as follows:

"4. If any well capable of producing oil and/or gas . . . is at any time shut-in and production therefrom is not sold or used off the premises, nevertheless such shut-in well shall be considered a well producing oil and/or gas and the lease will continue in force while such well is shut-in, . . . For each such shut-in well . . . Lessee shall be obligated to pay or tender to Lessor . . . within 60 days after expiration of each period of one year in length (annual period) during which such well is shut-in, as royalty, the sum of \$1.00 multiplied by the number of acres subject to this lease . . ."

Earlier lease forms contained less comprehensive shut-in royalty clauses than the language above quoted, and in some cases shut-in royalty clauses did not specify a time for payment. In the absence of a specific time within which to pay shut-in royalty under a lease, if the obligation to pay shut-in royalty is mandatory rather than optional, a court probably will allow the lessee a reasonable time after the well is completed in which to make his or her first shut-in royalty payment.<sup>27</sup>

However, at least one court has held where the shut-in gas well payment was not mandatory, the lessee was not allowed a reasonable time after the well was shut-in to make a shut-in gas well payment and the lease was held to have terminated.<sup>28</sup> Where the lease specifies a definite time for making a shut-in royalty payment, failure to comply has been held to result in termination of the lease.<sup>29</sup>

#### F. Delay Rentals

Most oil and gas leases contain a delay rental clause which provides that if a well or operations for the drilling of a well have not been commenced on the leased premises prior to the end of one year, the lease will terminate unless the lessee pays or tenders to the lessor a specified amount, commonly known as a "delay rental."

The delay rental clause has been strictly construed by most courts, and any failure to pay as provided in the lease will result in termination of the lease. Michigan courts have followed the general rule and have applied a strict construction to delay rental clauses.<sup>30</sup>

Under a "drill or pay" lease, the lessee is obligated to either drill a well or pay the lease rental, but failure to pay the rental on or before the due date does not automatically terminate the lease. "Drill or pay" type leases are seldom seen in Michigan.<sup>30-1</sup>

#### G. Dry Hole Clauses

A dry hole clause in an oil and gas lease usually provides that where an unsuccessful well or "dry hole" is completed on the leased lands or on lands pooled therewith, the lease will not terminate if, within a specified period, the lessee resumes delay rental payments. These clauses have been upheld by the courts but usually the clause by itself will not extend the lease beyond its primary term, and does not permit the resumption of delay rentals after the end of the primary term.<sup>31</sup>

#### H. Damage Clauses

The general rule is that in the absence of negligence or excessive use, a lessee is liable to the surface owner only for those damages that are provided for in the lease.<sup>32</sup> This causes many problems where the surface owner suffers damage but does not own any mineral rights, and is therefore not entitled to any of the lease proceeds. Under Exhibit A, the lessee is obligated only to pay damages to growing crops on the leased premises.<sup>33</sup>

#### I. Pooling Clause

The purpose of the pooling clause is to permit the pooling or combination of separately owned lands within a single drilling unit, with production from a well located anywhere on the drilling unit to be allocated between the separately owned tracts in the unit based on each tract's proportionate share of the total surface acreage within the drilling unit.

Pooling clauses are the outgrowth of the development of conservation rules and regulations designed to prevent the drilling of unnecessary wells, and which prohibit the location of wells in a manner that would result in unreasonable drainage of oil and gas from adjacent lands. Present-day well spacing units in Michigan are generally a quarter-quarter section containing 40 acres, but may be smaller or much larger under circumstances which justify the issuance of special spacing orders by the Supervisor of Wells, Department of Conservation.<sup>34</sup> A lessee

should be careful to ascertain whether a special spacing order is applicable to the lands he proposes to drill.

In the absence of an expressly granted right to pool, compulsory pooling of lands may be accomplished under the pooling provision of PA 61 of 1939, as amended, and the rules adopted thereunder, in cases where either a lessee or lessor is unwilling to pool lands within a spacing unit as prescribed by rule or special spacing order.<sup>35</sup>

Under modern leases the pooling clause provides that pooling may be terminated at any time prior to discovery or after cessation of production from a well, and expiration of a lease will probably have the effect of terminating the pooling.<sup>36</sup>

#### J. Right to Cure Clause

Exhibit A provides in paragraph 7 that if a lessor claims that the lessee is in default in the performance of any of express or implied covenants of the lease, the lessor must give the lessee notice of the nature of the default claimed. The lessee then has 60 days from receipt of such notice to cure the default.

This type of clause has generally been upheld by the courts.<sup>37</sup> However, it will not protect the lessee against a missed delay rental payment, since the payment of delay rentals is not an express or implied obligation of the lessee. The "right to cure" clause was not generally included in oil and gas lease forms used in Michigan until recent years.

#### K. Assignability Clause

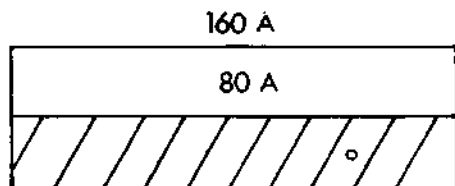
This clause simply acknowledges that the interests of both the lessor and lessee are assignable in whole or in part. If your client purchases property which is subject to an oil and gas lease, it is important that he promptly furnish the lessee with a copy of his deed so that the payment of rentals or royalties under the lease will thereafter be directed to the purchaser rather than to the prior owner who executed the lease.

#### L. The Entireties Clause Trap

Exhibit B contains a provision known as the entireties clause. You are referred to the language of paragraph 12 which provides in part as follows:

"If the leased premises are now or shall hereafter be owned . . . in separate tracts . . . all royalties accruing hereunder shall be treated as an entirety and shall be divided among and paid to such separate owners in the proportion that the acreage owned by each separate owner bears to the entire leased acreage." (Followed by exceptions where the leased lands consist of two or more nonabutting tracts and a further exception where part of the leased premises is consolidated with other lands for purposes of forming a drilling unit.)

To demonstrate the significance of this clause assume that your client has leased a 160-acre quarter section to Bonanza Oil Company. Based on seismic information, Bonanza drills a successful well on the South 80 acres of the 160-acre tract. The following drawing illustrates the factual situation.



The cross-hatched 80 acres on the South represents the drilling unit which we will refer to as Tract A. Your landowner client has a purchaser who wishes to purchase Tract B, which is the 80 acres North of the drilling unit, so your client executes a warranty deed covering Tract B without exception or reservation of the oil and gas rights.

The purchaser promptly asserts a claim to 1/2 of the royalties on oil and gas produced from the well on Tract A. Under the entireties clause in Exhibit B, his claim is justified and presumably would be upheld by the courts unless the seller can prove mutual mistake.<sup>38</sup>

Following the decision of the Texas court, *Gilcrease v Stanolind*,<sup>39</sup> which construed an entireties clause to have the effect of requiring double royalty payments, the entireties clause has been deleted from most modern lease forms.

#### M. Gas Storage, Warranty and Surrender Clauses

Some oil and gas leases contain provisions granting the lessee the right to store gas under the leased premises under specified circumstances. This right may have considerable value and

the landowner should be compensated accordingly for granting the storage rights.

#### Conclusion

A considerable body of law has developed surrounding lessor's and lessee's rights and obligations under the various provisions found in an oil and gas lease. Comprehensive discussions of these topics can be found in Summers, *Oil and Gas Law*, Vols. 1-8; Williams and Meyers, *Oil and Gas Law*, Vols. 1-6, and the various articles I have noted. Also consult the Michigan statute governing oil and gas exploration and production, Public Act 61 of 1939, as amended, MCLA 319.1-319.27, and the Rules and Regulations promulgated thereunder, MAC Rule 299.1101-299.2102.

Inquiries as to the existence of special spacing orders which may be in effect should be directed to the Geology Division, Michigan Department of Natural Resources.

However, the starting point in every case must be the specific language contained in the oil and gas lease to which the lessor is committed.

#### Footnotes

1. Oil and Gas News, April 25, 1980
2. Ibid
3. Oil and Gas News, May 9, 1980
4. Oil and Gas News, April 18, 1980
5. *People v Blankenship*, 305 Mich 79, 8 NW 2d 919 (1943)
6. Williams & Meyers, *Manual of Oil and Gas Terms*, p. 281
7. Williams & Meyers, *Manual of Oil and Gas Terms*, pp. 174-75
8. Browder, "Accommodation of the Conflicting Interests of the Mineral Owner and the Surface Owner" 25th Annual Institute on Oil and Gas Law and Taxation, Southwestern Legal Foundation (1974), *Yates v Gulf Oil Corp.*, 182 F.2d 286 (5th Cir. Tex. 1950), *Gulf Oil Corp. v Whitaker* 257 F.2d 157 (5th Cir. Tex. 1958)
9. Summers Oil and Gas, Vol. 1, Sec. 25.1
10. Summers Oil and Gas, Vol. 4, Sec. 652
11. MCLA 319.1-319.27
12. 511 SW2d 160 (Ark. 1974)
13. Browder, "Accommodation of the Conflicting Interests of the Mineral Owner and Surface Owner." (supra)
14. *Hancock Oil Co. of California v Meeker-Gamer Oil Co. et al*, 257 P.2d 988 (Calif. DCA-1953). Contra see *The Atlantic Refining Co. v Bright & Schiff*, 321 SW2d 167 (Tex CCA-1959).
15. Williams & Meyers, *Oil and Gas Law*, Vol. 2, Sec. 502.

16. *Getty v Elcon Detroit Inc.*, Otsego County Circuit Court (1975).

17. MAC. — R 299.1205.

18. *Krumholz v Goff*, 198 F. Supp. 129 (1961), affirmed in part and remanded in part, 315 F.2d 575. *Briggs v Sarkeys Inc.*, 418 P.2d 620 (1966).

19. Summers Oil and Gas Vol. 2, Sec 349, *Walton v Ziskoff*, 372 Mich. 491 (1964) and *Robinson v Gordon Oil Company*, 258 Mich. 643 (1932).

20. *Goble v Goff*, 327 Mich. 549 (1950).

21. *Leonard Crude Oil v Walton*, 39 Mich. App. 293 (1972).

22. Williams, *Oil and Gas Law*, Vol. 3, Sec. 604.2-604.4.

23. Williams and Meyers, *Oil and Gas Law*, Vol. 3, Sec. 604.4.

24. *Haby v Stanolind*, 228 F.2d 298 (1954), Hazlett, "Effect of Cessation of Production on Leases and Term Royalties," 10th Annual Institute on Oil and Gas Law and Taxation, Southwestern Legal Foundation (1959), *Greer v Salmon*, 479 P.2d 294 (N. Mex. 1970).

25. *Sinclair Oil & Gas v Bishop*, 441 P.2d 436 (Okla. 1968).

26. Williams and Meyers, *Oil and Gas Law*, Vol. 3, Sec. 656.3, *Melancon v The Texas Co.*, 89 So.2d 135 (La. 1956) and *Bollinger v The Texas Co.*, 95 So.2d (La. 1957).

27. Summers Oil and Gas, Vol. 2, Sec. 299.

28. *Gulf Oil Corp. v Reid*, 323 SW2d 107, affirmed by 337 SW2d 267 (Tex-1960).

29. Summers Oil and Gas, Vol. 2, Sec. 299, Noel, "Shut-in Gas Well Payments" 12th Annual Institute on Oil and Gas Law and Taxation. Southwestern Legal Foundation (1961). *Steeple Oil & Gas Corp. v Amend*, 337 SW2d 809 (Tex. Civ. App. 1960), *Greer v Salmon*, 479 P.2d 294 (N. Mex. 1970).

30. *Steed v Pure Oil Co.*, 260 Mich 699 (1932). *Concord Oil & Gas Co. v Thompson*, 248 Mich 230 (1929). Williams *Oil and Gas Law*, Vol. 3, Sec. 606.2.

30.1. Summers Oil and Gas, Vol.3, Sec. 440.

31. Williams, *Oil and Gas Law*, Vol. 3, Sec. 613.3. *Citizens By-Products Coal Co. v Arthalony*, 351 NE2d 57 (Ind. App-1976).

32. Summers Oil and Gas, Vol. 4, Sec 652.

33. Paragraph 9, Exhibit A.

34. Rules 201(A) and 203, Rules and Regulations adopted pursuant to PA 61 of 1939, as amended.

35. MCLA 319.13 and Rule 205 of Rules and Regulations pursuant to PA 61 of 1939, as amended.

36. *Teraco, Inc. v Lettermann*, 343 SW2d 726 (Tex. CCA-1961).

37. Williams, *Oil and Gas Law*, Vol. 4, Sec. 682.1.

38. *Coyne v Simrall Corp.*, 140 F.2d 574 (Mich-1944).

39. *Gilcrease v Stanolind*, 262 SW2d 756 (Tex. A.C.-1953) and 266 SW2d 850 (Tex S. Ct.-1954).



## OIL AND GAS LEASE

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between

\_\_\_\_\_ hereinafter called Lessor (whether one or more), and

\_\_\_\_\_ hereinafter called Lessee, WITNESSETH:

1. Lessor, for and in consideration of \$ \_\_\_\_\_, the receipt of which is hereby acknowledged, and the covenants and agreements of the Lessee hereinafter contained, does hereby grant, lease and let unto Lessee, exclusively, for the purposes of exploring by geophysical and other methods, drilling, mining, operating for and producing oil and/or gas, and of laying pipelines, building and maintaining roadways, and of building tanks, power stations and structures thereon, to produce, treat, save, care for and remove said production all that certain tract of land situated in the County of \_\_\_\_\_

State of \_\_\_\_\_ described as follows, to wit:

and containing \_\_\_\_\_ acres, more or less, and including all lands and interests therein contiguous or appurtenant to said described lands and owned or claimed by the Lessor, whether or not specifically described above. The term "oil" when used in this lease shall mean crude oil and other hydrocarbons in liquid form at the wellhead. The term "gas" when used in this lease shall mean natural gas, casinghead gas or any other substance in a gaseous state at the wellhead.

2. It is agreed that this lease shall remain in force for a primary term of 10 years from this date, and as long thereafter as operations are conducted upon said land or upon a Unit which includes all or a part of said land with no cessation for more than 90 consecutive days. Whenever used in this lease the word "operations" shall refer to any of the following activities: preparing location for drilling, drilling, testing, completing, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil and/or gas, and production of oil and/or gas whether or not in paying quantities.

3. Lessee covenants and agrees to pay the following royalties: A. One-eighth of the oil produced and saved from said lands to be delivered free of cost to the credit of the Lessor into tank reservoirs or into the pipeline to which the wells may be connected. B. One-eighth of the proceeds from the sale of gas at the wellhead, or one-eighth of the market value of gas at the wellhead for gas sold at any point other than the wellhead or used by Lessee for purposes other than those specified in Paragraph numbered 9 of this lease.

Lessor agrees to pay one-eighth of any and all taxes and privilege fees levied upon production of oil or gas from said lands, and Lessee is hereby authorized to pay such taxes and privilege fees on behalf of Lessor and to deduct the amount so paid from any monies payable to Lessor hereunder.

4. If any well, capable of producing oil and/or gas, located on the leased lands, or on lands pooled or communitized with all or part of the leased lands, is at any time shut-in and production therefrom is not sold or used off the premises, nevertheless such shut-in well shall be considered a well producing oil and/or gas and this lease will continue in force while such well is shut-in, whether before or after expiration of the primary term. Lessee shall use reasonable diligence to market oil and/or gas capable of being produced from such shut-in well, but shall be under no obligation to reinject or recycle gas, or to market such oil and/or gas under terms, conditions, or circumstances which in Lessee's judgment are uneconomic or otherwise unsatisfactory. For each well shut-in on the leased land, or on lands pooled or communitized with all or part of the leased lands, Lessee shall be obligated to pay or tender to Lessor in the same manner provided for payment of delay rentals within 60 days after expiration of each period one year in length (annual Period) during which such well is shut-in, as royalty, the sum of \$1.00 multiplied by the number of acres subject to this lease, provided, however, that if production from said well or wells is sold or used off the premises before the end of any such period, or, if at the end of any such annual period this lease is being maintained in force and effect other than by reason of such shut-in well, Lessee shall not be obligated to pay or tender said sum of money for that annual period for any shut-in well on the leased lands.

5. If operations are not commenced on said lands on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, this lease shall terminate as to both parties, unless Lessee on or before said date shall pay or tender to Lessor or to Lessor's credit in the \_\_\_\_\_

Bank, at \_\_\_\_\_ or its successors, as Lessor's agent, which shall continue as the depository regardless of changes in ownership of delay rental, royalties, or other money, the sum of \_\_\_\_\_

Dollars, which shall operate as rental and cover the privilege of deferring operations for one year from said date. The payment herein referred to may be made in currency, draft, or check, at the option of Lessee, and the depositing of such currency, draft, or check in any post office, with sufficient postage and properly addressed to Lessor, or said bank, on or before said last mentioned date, shall be deemed sufficient payment as herein provided. In like manner and upon like payments or tenders operations under this lease may be further deferred for like annual periods successively during the term of this lease. Said delay rentals shall be apportionable as to said land on an acreage basis, and a failure to make proper payment or tender of delay rental as to any portion of said land or as to any interest therein shall not affect this lease as to any portion of said land or as to any interest therein as to which proper payment or tender is made. Any payment or tender which is made in an attempt to make proper payment, but which is erroneous in whole or in part as to parties, amounts, or depository, shall nevertheless be sufficient to prevent termination of this lease in the same manner as though proper payment had been made; provided, however, Lessee shall be obligated to correct such error and make proper payment within 30 days after receiving written notice of the error from Lessor.

6. If, during the primary term of this lease and prior to the discovery of oil and/or gas, operations hereunder shall result in a dry hole or holes on this land or lands communitized therewith, or operations under this lease shall end with the cessation of production, or from any other cause, this lease shall not terminate, provided that Lessee shall again commence operations or tender the payment of rental in the manner and amount hereinbefore provided on or before the latest of the following dates: The next ensuing rental payment date, 90 days after the completion of the dry hole or 90 days after the cessation of production.

7. In the event Lessor shall claim a default in the performance of any express or implied covenant of this lease, Lessor shall give notice in writing by certified United States mail, addressed to Lessee at his principal office, specifying the facts relied upon as constituting a breach hereof. Lessee shall have 60 days from receipt of such notice to commence and thereafter pursue with reasonable diligence such action as may be necessary or proper to satisfy such obligation of Lessee, if any, with respect to Lessor's notice. No judicial action may be commenced by Lessor for forfeiture of this lease or for damages until after said 60 day period. Lessee shall be given a reasonable opportunity after judicial ascertainment to prevent forfeiture by discharging its express or implied obligation as established by the court.

8. If this lease covers less than the entire undivided interest in the oil and gas in the above described lands, then the royalties and rentals as provided above shall be paid to Lessor only in the proportion which the interest in oil and gas covered by this lease bears to the entire undivided interest therein.

9. Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for Lessee's operations hereunder, except water from the wells of Lessor. When requested by Lessor, Lessee shall bury Lessee's pipelines below plow depth. No well shall be drilled nearer than 200 feet to the house or barn now on the leased land without written consent of Lessor. Lessee shall pay for damages caused by Lessee's operations to growing crops on said land. Lessee shall have the right at any time to remove all machinery and fixtures placed on said lands, including the right to draw and remove casing.

10. Lessee is hereby granted the right to pool or unitize the lands covered by this lease, or any part of said lands, with other lands to comprise an oil development unit or units of not more than approximately 160 acres and/or a gas development unit or units of not more than approximately 640 acres; provided, however, that if larger units than those permitted above, either at the time established or thereafter are required or permitted under any governmental rule or order for the drilling or operation of a well at a regular location or obtaining the maximum allowable from any well or for any other reason, then the maximum unit size authorized hereby shall conform to the size required or permitted by such governmental rule or order. Lessee may enlarge the unit to the maximum area permitted herein and reform said unit to include after acquired leases within the unit area. Lessee may create, enlarge or reform the unit or units as above provided at any time, and from time to time, during the continuance of this lease, either before or after production is obtained. In no event shall Lessee be required to drill more than one well in each unit. Lessee may reduce or terminate such unit or units at any time prior to the discovery of oil or gas on the pooled acreage, or at any time after discovery subsequent to the cessation of production. Lessee shall create, enlarge, or reform, reduce, or terminate each unit by recording a written declaration to that effect in the office of the Register of Deeds in the county or counties in which such unit is located. Any operations conducted on any part of the lands pooled shall be deemed to be on the lands leased herein within the meaning of all provisions of this lease. Production of oil and/or gas from the unit shall be allocated to the lands described herein which are included in the unit in the same proportion as the number of surface acres in the lands described herein which are included in the unit bears to the total number of surface acres in the unit.

11. All present and future rules and regulations of any governmental agency pertaining to well spacing, drilling or production units, use of material and equipment, or otherwise, shall be binding on the parties hereto with like effect as though incorporated herein at length, provided, however, that no such rule or regulation shall prevent Lessee from declaring or pooling an oil and/or gas development unit or units under the provisions of Paragraph numbered 10 hereof, larger than the well spacing, drilling or production unit prescribed or permitted by such rule or regulation. Lessee's express or implied obligations hereunder shall be suspended and Lessee shall not be liable in damages while compliance with such obligations is prevented or hindered by circumstances not reasonably within Lessee's control. These circumstances include, but are not limited to the following: Conflict with federal, state or local laws, rules, regulations and executive orders; acts of God; strikes; lockouts; riots; wars; equipment failures; inability to obtain materials in the open market or to transport said materials. If the period of suspension commences more than ninety days prior to the end of the primary term of this lease, then that period of suspension shall be added to the primary term. If the period of suspension commences less than ninety days prior to the end of the primary term or at any time after the primary term, then this lease shall not terminate if Lessee shall commence or resume operations within ninety days after the end of that period of suspension. If no well capable of production is located on the leased lands or lands pooled therewith, then Lessee shall pay delay rentals on such anniversary of the due date provided in Paragraph numbered 5, above, during the period of suspension, whether during or after the original primary term, commencing on the next ensuing anniversary or within 90 days after commencement of the period of suspension, whichever occurs later. If a well capable of production is located on the leased lands or lands pooled therewith, then Lessee shall be obligated to pay shut-in royalties as provided in Paragraph numbered 4 above.

12. If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants and provisions of this lease shall extend to his heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be binding on Lessee until 45 days after Lessee has been furnished with a true copy of the written transfer or assignment thereof, and rentals shall be adjusted in accordance with such change of ownership or assignment at the next succeeding rental anniversary thereafter. It is hereby agreed that in the event this lease shall be assigned as to a part or as to parts of the above described lands, and the assignee or assignees of such part or parts shall default in the payment of the proportionate part of the delay rentals due from his or them, such default shall not operate to defeat or affect this lease insofar as it covers a part or parts of said lands upon which the said Lessee or any assignee thereof shall make due payment of said rentals.

13. Whenever any well or wells on said lands shall be used by the Lessee for the injection of water, brine or other fluids produced from lands other than said leased lands for disposal as a conservation measure, Lessee shall pay to Lessor the sum of \$200.00 per year for each well so used in addition to all other considerations specified in this lease. The injection of water, brine, or other fluids into subsurface strata shall be made only into the strata below those furnishing domestic fresh water and Lessee agrees to protect adequately Lessor's fresh water supply from injury as the result of any of its operations.

14. Lessor hereby warrants and agrees to defend the title to said lands herein described and agrees that Lessee shall have the right, in the event of default, to redeem for Lessor, by payments, any land contract, mortgage, taxes or other liens on the above described lands, and be subrogated to the rights of the holder thereof, and may reimburse itself by applying to such payments any royalty or rentals accruing hereunder.

15. Lessee may at any time surrender this lease as to all or any part of the lands described herein, by delivering or mailing a release to Lessor, if the lease is not recorded, or by placing a release of record in the proper county, if the lease is recorded. If this lease is surrendered only as to part of said lands, any delay rental or shut-in royalties which may thereafter be payable hereunder shall be reduced proportionately.

16. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Executed as of the day and year first above written.

WITNESSES: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_

(Individual Acknowledgement)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

by \_\_\_\_\_

My Commission expires: \_\_\_\_\_

Notary Public, \_\_\_\_\_, County  
 Acting in \_\_\_\_\_, County

STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_

(Corporate Acknowledgement)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

by \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_  
 a \_\_\_\_\_ corporation, on behalf of the corporation.

My Commission expires: \_\_\_\_\_

Notary Public, \_\_\_\_\_, County  
 Acting in \_\_\_\_\_, County

This lease was prepared by \_\_\_\_\_ of \_\_\_\_\_

## OIL AND GAS LEASE

Agreement: Made and entered into the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ by and between \_\_\_\_\_

of \_\_\_\_\_ hereinafter called lessor (whether one or more), and \_\_\_\_\_ hereinafter called lessee:

1. Witnesseth: That lessor, for and in consideration of \_\_\_\_\_ Dollar \_\_\_\_\_ cash in hand paid, the receipt of which is hereby acknowledged, and the covenants and agreements hereinafter contained on the part of lessee to be paid, kept and performed, has granted, demised, leased and let, and by these presents does grant, demise, lease and let unto lessee, exclusively, for the purposes of prospecting and exploring by geophysical and other methods, drilling, mining, operating for and producing oil and gas, and of laying pipelines, building and maintaining roadways and of building tanks, power stations and structures thereon to produce, treat, save, care for and remove said production, all that certain tract of land situate in the Township of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_, described as follows, to wit:

of Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_ and containing \_\_\_\_\_ acres, more or less, and including all lands and interests therein, contiguous or appurtenant to said described land and owned or claimed by lessor, whether or not specifically described above.

2. It is agreed that this lease shall remain in force for a primary term of Ten (10) years from this date and if lessee shall commence to drill within said primary term or any extension thereof, lessee shall have the right to continue drilling to completion with reasonable diligence; said term shall extend as long thereafter as oil and gas, or either of them is or can be produced by lessee from said land or from a communitized unit as hereinafter provided.

3. In consideration of the premises lessee covenants and agrees:

To deliver to the credit of lessor, free of cost, into tank reservoirs or into the pipe line to which lessee may connect wells on said land, the equal one-eighth (1/8) part of all oil produced and saved from the leased premises.

To pay lessor one-eighth (1/8) of the gross proceeds at the wellhead, payable quarterly, for the gas from each well where gas is found, while the same is being used off the premises, and if used in the manufacture of gasoline a royalty of one-eighth (1/8), payable monthly at the prevailing market rate for gas at the wellhead. Where such gas is not sold or used for a period of one year, and there is no producing gas or oil well on said land or on a communitized unit, as hereinafter provided, including said land, lessee may pay or tender as royalty the sum of One Dollar (\$1.00) multiplied by the number of acres subject to this lease at the end of each such one year period, payable annually at the end of each such year during which gas is not sold or used, and while such royalty is so paid or tendered this lease shall be held as a producing property under the above paragraph setting forth the primary term hereof.

To pay lessor for gas produced from any oil well and used off the premises or in the manufacture of gasoline or any other product a royalty of one-eighth (1/8) of the proceeds, payable monthly at the prevailing market rate at the wellhead.

Lessor agrees to pay one-eighth (1/8) of any and all taxes levied or assessed upon the production of oil or gas from said land, and lessee is hereby authorized to pay such taxes and assessments on behalf of lessor and to deduct the amount so paid from any monies payable to lessor hereunder.

4. If no well be commenced on said land on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, this lease shall terminate as to both parties, unless lessee shall on or before that date pay or tender to lessor or lessor's credit in the \_\_\_\_\_ Bank at \_\_\_\_\_

\_\_\_\_\_ or its successors, as lessor's agent, which shall continue as the depository regardless of changes in ownership of said land, the sum of \_\_\_\_\_

dollars which shall operate as a rental and cover the privilege of deferring the commencement of a well for \_\_\_\_\_ months from said date. The payment herein referred to may be made in currency, draft, or check at the option of lessee and the depositing of such currency, draft or check in any postoffice, with sufficient postage and properly addressed to lessor, or said bank, on or before said last mentioned date, shall be deemed payment as herein provided. In like manner and upon like payments or tenders, the commencement of a well may be further deferred for like periods of the same number of months successively during the term of this lease. It is understood and agreed that the consideration first recited herein, the down payment, covers not only the privilege granted to the date when said first rental is payable as aforesaid, but also lessee's option of extending that period as aforesaid and any and all other rights conferred.

5. If during the primary term of this lease and prior to the discovery of oil or gas, lessee shall drill a dry hole or holes on this land or land communitized therewith, or, if during the primary term of this lease production on this land or on land communitized therewith shall cease from any cause, this lease shall not terminate provided, within 12 months from the expiration of the last rental period for which rental has been paid or before the next ensuing rental paying date, whichever occurs later in time, operations for the drilling of a well shall be commenced or lessee tenders the payment of rentals in the manner and amount hereinbefore provided.

6. If lessor owns a less interest in the above described land than the entire undivided fee simple estate therein, then the royalties and rentals therein provided for shall be paid to lessor only in the proportion which lessor's interest bears to the whole and undivided fee.

7. Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for lessee's operation thereon except water from the wells of lessor. When requested by lessor, lessee shall bury lessee's pipe line below plow depth. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of lessor. Lessee shall pay for damages caused by lessee's operations to growing crops on said land. Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

8. For the purpose of oil and/or gas development and production under this lease, lessor does hereby grant to lessee the right to pool or communitize said premises, or any part thereof, with other land to comprise an oil development unit of not more than approximately eighty (80) acres and/or a gas development unit of not more than approximately three hundred

twenty (20) acres but lessee shall in no event be required to drill more than one well on said unit. Each unit may be created by lessee's recording in the Register Of Deeds Office within the county or counties in which said unit is situated, an instrument identifying the unit so created. If such oil or gas well shall not be drilled on the premises herein leased it shall nevertheless be deemed to be upon the leased premises within the meaning of all the covenants, expressed or implied, in this lease, and lessor shall participate in the one-eighth (1/8) royalty from such oil and/or gas development unit only in the proportion that the number of acres owned by lessor within the limitations of such development unit bears to the total number of acres included therein. At the option of lessee, a diagonal well spacing pattern may be followed.

9. Notwithstanding anything to the contrary herein contained or implied by law, all present and future rules and regulations of any governmental agency pertaining to well spacing, drilling or production units, use of material and equipment or otherwise shall be binding on the parties hereto with like effect as though incorporated herein at length.

10. If the estate of either party hereto is assigned—and the privilege of assigning in whole or in part is expressly allowed—the covenants hereof shall extend to their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be binding on lessee until 30 days after lessee has been furnished with a written transfer or assignment or a true copy thereof, and rentals shall be adjusted in accordance with such change of ownership or assignment at the next succeeding rental anniversary after receipt by lessee of evidence satisfactory to lessee of such change of ownership or assignment. It is hereby agreed that in the event this lease shall be assigned as to a part or as to parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rents due from him or them, such defaults shall not operate to defeat or affect this lease insofar as it covers a part or parts of said lands upon which the said lessee or any assignee thereof shall make due payments of said rentals.

11. Whenever any well or wells on said lands shall be used by lessee for the injection of water, brine or other fluids produced from lands other than said leased premises for disposal as a conservation measure, lessee shall pay to lessor the sum of One Hundred Dollars (\$100.00) per year for each well so used in addition to all other considerations specified in this lease. The injection of water, brine, or other fluids into subsurface strata shall be made only into strata below those furnishing domestic fresh water and lessee agrees to protect adequately lessor's fresh water supply from injury as a result of any of its operations.

12. If the leased premises are now or shall hereafter be owned in severally or in separate tracts, the premises, nevertheless, shall be developed and operated as one lease and all royalties accruing hereunder shall be treated as an entirety and shall be divided among and paid to such separate owners in the proportion that the acreage owned by each separate owner bears to the entire leased acreage. Provided, however, if the leased premises consist of two or more non-abutting tracts, this paragraph shall apply separately to each non-abutting tract, and further provided that if a portion of the leased premises is hereafter consolidated with other lands for the purpose of operating the consolidated tract as one lease, this paragraph shall be inoperative as to such portion so consolidated. There shall be no obligation on the part of the lessee to offset wells on separate tracts into which the land covered by this lease may be hereafter divided by sale, devise, or otherwise, or to furnish separate measuring or receiving tanks.

13. Lessor hereby warrants and agrees to defend the title to said lands herein described and agrees that lessee shall have the right at any time to redeem for lessor, by payments, any mortgage, taxes or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof, and the undersigned lessors for themselves and their heirs, successors, and assigns, hereby surrender and release all rights of dower and homestead in the premises herein described, insofar as said right of dower and homestead may in any way affect the purposes for which this lease is made as recited herein.

14. Lessee may at any time surrender this lease as to all or any part of the lands covered thereby, by delivering or mailing a release thereof to lessor, if the lease is not recorded, or by placing a release thereof of record in the proper county, if the lease is recorded; and if surrendered only as to a part of said lands, any delay rentals or acreage payments which may thereafter be payable hereunder shall be reduced proportionately.

\_\_\_\_\_

IN TESTIMONY WHEREOF WE SIGN, This the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } SS. ACKNOWLEDGMENT TO THE LEASE

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_\_\_, before me, the undersigned, a Notary Public in and for said county, in the State aforesaid, personally appeared \_\_\_\_\_

to me known as the person\_\_\_\_\_ described in and who executed the foregoing instrument and acknowledged that \_\_\_\_\_ he\_\_\_\_ had executed the same as \_\_\_\_\_ free act and deed.

Notary Public \_\_\_\_\_ County.

My Commission Expires \_\_\_\_\_, 19\_\_\_\_ Acting in \_\_\_\_\_ County, \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } SS. ACKNOWLEDGMENT TO THE LEASE

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_\_\_, before me, the undersigned, a Notary Public in and for said county, in the State aforesaid, personally appeared \_\_\_\_\_

to me known as the person\_\_\_\_\_ described in and who executed the foregoing instrument and acknowledged that \_\_\_\_\_ he\_\_\_\_ had executed the same as \_\_\_\_\_ free act and deed.

Notary Public \_\_\_\_\_ County.

My Commission Expires \_\_\_\_\_, 19\_\_\_\_ Acting in \_\_\_\_\_ County, \_\_\_\_\_

This form was prepared by \_\_\_\_\_ of \_\_\_\_\_

MICHIGAN STATE UNIVERSITY



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