



Freeport-McMoRan Oil & Gas
700 Milam, Suite 3100
Houston, TX 77002

December 4, 2015

Ms. Suzanne Hyatt
Office of Mineral Resources
P. O. Box 2827
Baton Rouge, LA 70821-2827

Re: Proposed New State Lease Form

Dear Ms. Hyatt:

Thank you for allowing Freeport-McMoRan Oil & Gas ("FM O&G") the opportunity to comment upon the Office of Mineral Resources' proposed revisions to the current State Lease form. Please know that our attached comments are provided in a spirit of cooperation and result from our effort to foresee future demands of hydrocarbon exploration and production in Louisiana. FM O&G is committed to prudent and responsible operations within the State of Louisiana; it is with great pride that we partner with the State for continued oil, gas and economic development.

After an extensive review of the proposed lease form revisions and interdepartmental discussions on the same, FM O&G has identified several concerns, which are set forth in detail on the following pages. Our primary concerns are that the proposed changes will generate an overly burdensome increase in costs for all operators within the State, may create industry confusion resulting from several ambiguous provisions, and, most importantly to FM O&G, fail to address future oil and gas development, particularly the production of onshore, ultra-deep structures.

We know that many of our industry peers share these concerns. We therefore urge you to defer any final action on the lease form until the valid concerns and comments from industry can be properly considered and evaluated.

We look forward to working with you and your office on this project for the mutual benefit of FM O&G and the people of the State of Louisiana.

Sincerely,

Freeport-McMoRan Oil & Gas

A handwritten signature in blue ink that reads 'J. R. Rumsey'.

James R. Rumsey
Vice President - Land Development **T13**

**FM O&G COMMENTS TO PROPOSED
LOUISIANA STATE LEASE FORM**

- Primary Term - Ultra-Deep (pg. 5 - Art. 2(C)) We request that the entirety of proposed Section 2(C) be replaced with the language below:

If the Primary Term is extended under (1) or (2) above, Lessee's failure, before the end of the extended **Primary Term**, to commence secondary or tertiary recovery operations or commence (or recommence) drilling of an ultra-deep well and, **whether before or after the end of the extended Primary Term**, reach the required True Vertical Depth (unless prevented due to mechanical or other related downhole causes), shall subject Lessee, after demand, to liquidated damages equal to a double rental payment, payment of which shall be due within thirty (30) days of the end of the extended Primary Term, regardless of whether this Lease is held by other production or acceptable Lease operations not qualifying as a secondary or tertiary recovery project.

Comment: Requiring a lessee drilling an Ultra-Deep well to reach True Vertical Depth *prior* to the end of the extended Primary Term exposes the lessee to the possibility and near certainty of paying liquidated damages, because of the length of time required to drill an Ultra-Deep well. For example our Jeanerette Minerals LLC # 1 Ultra-Deep well drilled and completed in Section 11, Township 13 South, Range 11 East, St. Martin Parish took approximately 500 days to drill to total depth. The provision as currently proposed in effect penalizes a lessee who is already risking a large amount of capital on a well being drilled for the mutual benefit of lessee and the State.

- Shut-In Payments (pgs. 7,8 – Art. 3(F)) We request that this proposed provision be withdrawn and be replaced with the provisions contained in the existing lease form.

Comment: The proposed revision places a greater administrative burden on a lessee to obtain approval for making shut-in payments. Requiring a lessee to make application to the Mineral Board on a semi-annual basis prior to the end of each shut-in period adds a complexity to the process that places an undue burden on the Lessee, that may result in unintended errors that could unnecessarily jeopardize a lessee's proper maintenance of the lease.

- Royalty Clause (pgs. 11,12 – Art. 6(A) and Art. 6(B)) We request that the first paragraph of proposed Section 6(A) be revised to read as follows:

(A) _____ (____%) percent of the value, as hereinafter provided, of all oil, including condensate or other liquid mineral, 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 may elect one of the previous listed indexes or bulletins for each calendar year as the "Fair market price" floor and pay the higher of the sales price received or the elected index or bulletin.**

We also request that the first paragraph of proposed Section 6(B) to revised to read as follows:

- (B) _____ (____%) percent of the value, as hereinafter provided, of all gas, including casinghead gas, produced (includes sales, vented, flared, 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-affiliated or affiliated party, or vented, flared, flash gas or gas utilized (includes gas used in lift operations) 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 Liquefied 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. **Lessee may elect one of the previous listed indexes or bulletins for each calendar year as the "Fair Market price" floor and pay the higher of the sales price received or the elected index or bulletin.**

Comment: Without this revision there is uncertainty as to which pricing source the lessee must use on a monthly basis. The proposed revision removes the risk of a lessee being viewed, in the eyes of an auditor, in non-compliance with the royalty provisions of the lease, due to any monthly variances that may occur between the pricing sources.

- Transfers and Assignments (pg. 15 – Art. 7(D)) We request that proposed Section 7(D) be withdrawn and be replaced with the existing lease form provisions addressing transfers and assignments.

Comment: Having the State approve a transferee's financial and technical capacities would seem to slow the approval process, which in turn could have a negative impact on

transactions that involve State leases. The State could be placing itself in the position of being bottle a neck in the transaction process while researching the capacities of transferees. This in turn could result in the the need for additional State staff in order to administer these requirements.

Further, the clear and unambiguous language in proposed section 7(C) makes it clear that an assignor remains fully liable for residual lease obligations, notwithstanding an assignee's financial capacity. Rather than creating a potential bottleneck for assignments and placing an additional burden on the State to review and pass judgments on an intended assignee's financial and technical capability, we suggest that the State rely on the language contained in Section 7(C) and the assignor's vested interest in selecting an assignee that can fulfill all the lease's obligations.

- Pooling and Unitization (pgs. 15,16 – Art. 8(B) and (C))

We request that the following sentence be added to the end of the first paragraph of proposed Section 8(B):

An extension of the 90 day period will be granted and not unreasonably be withheld upon application made by Lessee due to the existence of extraordinary issues, including title or survey issues.

Comment: There are many instances in which a lessee may not be able to produce a unit survey plat within 90 days of initial production due to title or survey issues, especially those related to navigable water bottoms. Additionally, a lessee who is a non-operator in a unit may not have the ability to dictate the timing of the survey to the operator of the unit. Without the possibility of waiver relief when title or survey issues arise, a lessee in a commissioner's unit would be at risk for payment of liquidated damages.

We also request that that proposed Section 8(C) be revised by deleting the last sentence, i.e.,

Once the unit is formed, royalties attributable to the Leased Premises included in the unit will be paid back to the first date of production from the well.

Comment: By requiring the payment of royalties back to the date of first production, a lessee could be exposed to the risk of paying double royalties in those instances in which a well has produced prior to the formation of the unit.

- Lessee Reporting (pg. 17, Art. 9 (A)) We request that the items contained in proposed Subsections 9(A) (6), (7) and (8) be withdrawn.

Comment: We believe that the items contained in sub-sections 9(A) (6), (7) and (8) are of a highly proprietary nature, and go to the very core of a lessee's business interests. Supplying these to the State will allow industry competitors, by means of a public records request, to unfairly obtain valuable company assets of a lessee. This would reduce a lessee's competitive advantage secured as a result of a previous investment of

capital. Additionally regarding geophysical data there generally are contractual licensing limitations that restrict licensee's ability to make this information public. Especially with regard to geophysical data, compliance with this provision of the lease exposes a lessee to possible breach of contract claims by geophysical data licensing companies.

- Termination and Release (pg. 20, Art.11(D)) We request that proposed Section 11(D) be withdrawn in its entirety and be replaced with the following:

In complying with the requirements of this Article, Lessee additionally shall compile and provide to Lessor a listing of all unplugged wells and facilities owned or operated by Lessee on the acreage released or no longer in use that require abandonment **that were drilled or installed pursuant to the terms and provisions of this lease.**

Comment: The current wording of the proposed provision appears to make the Lessee responsible for unplugged wells that were drilled prior to the effective date of the lease. Additionally, we see no benefit to making the list a part of the public records.

- Abandonment and Restoration (pg. 20, Art. 12(A)) We request that proposed Subsection (3) of Section 12(A) be revised to read as follows:

(3) restore the Leased Premises or portion thereof to its original condition **subject to ordinary wear and tear and as reasonably practicable**, all at Lessee's sole risk, cost and expense, and subject to compliance with all applicable laws, rules and regulations.

Comment: Restoring all leased premises to "original condition" following the conduct of mineral operations is an impossible standard to meet. The revised language is a standard that may be reasonably met, while at the same achieving the State's interest of restoration of the premises. The provision as revised comports with similar provisions contained in private sector leases.

We also request that the sentence contained on Lines 3 through 7 of proposed Section 12(D) on page 21 be revised to read as follows:

Lessee shall remain obligated under this Lease to appear before the Board to request an extension of time and present an abandonment plan and schedule to fulfill its obligations to properly plug and abandon all wells, remove from the premises all structures and facilities serving said wells and restore the Leased Premises as near as **reasonably practicable** to its pre-leased condition.

Comment: This proposed revision keeps the standards for restoration of the premises in proposed in Article 12 consistent.

- Responsibility for Environmental Damage (pgs. 21-23, Art. 14) We request that the entirety of proposed Article 14 be deleted, with the exception of those provisions previously contained in the present lease form, that is, lines 28 thru 39 on page 22.

Comment: The new provisions contained in this Article are overly broad in many ways, including lack of specificity with respect to what constitutes a pollutant. The lessee in effect appears subject to possible unilateral judgments and determinations that may be made by the State, without any recourse. In effect a lessee could be subject to regulatory penalties without “having its day in court”. We suggest that before making such a dramatic change, public discourse with industry should first take place. The goal of which would be to provide the necessary checks and balances that would both protect the State’s interest and provide due process for members of industry.

- Audit Rights (pg. 27, Art. 20 (B)) We request that proposed Section 20(B) be withdrawn in its entirety.

Comment: The statutes referenced in Section 20(B) do not appear to be workable when applied to the matters related to audits of State leases. The audit rights under La. R.S. 47:1542-1543 are those used for revenue and taxation, which include Section 1542.1 that provides “any document or record which a taxpayer is required to maintain in regard to a tax levied pursuant to this Subtitle, shall be retained by the taxpayer until the tax to which they relate have prescribed.” The problem is that there is no prescriptive period for the payment of royalties due the State. Applying this statute would require a lessee to retain its records in perpetuity.

- Notices – There are many instances in the lease form in which notices must be given prior to triggering a demand for penalties/liquidated damages. In order to achieve the State’s interest and help the lessee comply with any notices issued, we request that a Notice provision be added which would specifically provide to whom or to which department within a company a notice should be delivered. Without such a provision, a lessee may functionally receive a notice but not be aware of its importance because the proper person or department has not received it.