LOGA
LOUISIANA OIL & GAS ASSOCIATION

DON G. BRIGGS, *President*

MEMORANDUM

TO: Suzanne Hyatt

FROM: Don G. Briggs

DATE: December 4, 2015

RE: Comments to Draft 2016 State Lease Form

Dear Suzanne,

Attached please find my comments to the recent draft of the Louisiana State Lease Form Revised 2016.

You will first find my comments and proposals for the form under the file entitled "12-4-StateLandsComments". Following my comments, I have also attached a memorandum, comments and marked-up copy of the Louisiana State Lease Form Revised 2016 from Thomas G. Smart of the Onebane Law Firm. We have attached his comments and proposals to emphasize our support for the additions and edits he has suggested.

If I can be of any assistance, by further explaining any of my comments and subsequent proposals, please let me know. I greatly appreciate the opportunity to submit my comments on the State Lease Form and appreciate your consideration.

Sincerely,

Don G. Briggs

LOGA is Louisiana's Oil & Gas Industry

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Reference	Item	Comment/Proposal
Form A	2, 3	The Parties are bound *in solido* for complying with all obligations under the Lease and Operating Agreement. The difficulty is that there is no effective date provided. The consequence of this wording would render an approved assignor responsible for all compliance failures by the assignee and all successors thereafter for all time. This will discourage many potential lessees with relatively greater financial resources from acquiring State leases and may leave the State with bidders whose more limited financial resources are relatively less at risk following assignment. Recommend this document should define the date of Board Approval or other certain date as the “Effective Date”. The Assignor should only accept obligations arising under the Lease and Operating Agreement that accrued before the Effective Date and the Assignee for those accruing afterwards. This is the standard method such assignments are drafted.
	4, 5	It is common in the conveyance of mineral interests for the transferor and transferee to allocate by contract liability for certain events to each party at difference times. The consideration for the assignment is determined in part by reference to residual risks, or the lack thereof, following conveyance. The draft wording seeks to deny the parties from making any such allocation of liability. The unintended consequence of this, particularly in light of the proposals in items 2 and 3, is to deprive the parties of certainty in approaching the allocation of liabilities amongst themselves. Recommend this be removed.

Reference	Item	Comment/Proposal
Definition	"Actual reworking operations"	Recommend making specific reference to refracturing and stimulation operations, which also increase production. Also include downhole diagnostic operations in preparation for reworking operations. These diagnostic jobs help determine what rework operation should be conducted. Any prudent operator would perform these tests before committing to work. Running such diagnostic tests should fall within the scope of "acceptable lease operations".
Definition	"Paying quantities"	Although LA R.S. 31:124 and 31:125 are cited in the definition, the lease language goes significantly further than the statutes by further requiring that such "…*production must be sufficient to constitute serious or adequate consideration in relation to the amount of other leasehold payments such as bonus, rental or other sums*". If implemented, this imposes a significant additional burden on lessees. This additional uncertainty may dissuade many operators from bidding for State leases.
Article 1	Bonus	The drafting does not contain any provisions addressing what occurs if there is after acquired acreage. Recommend clarifying this.
Article 2(B)	Primary Term	The burden of "convincing evidence" seems unnecessarily high. Recommend instead "*good cause at the discretion of the Board pursuant to the Board's statutory authority under La. R.S. 30:129*." The provision should also recognize that leases may be amended or extended.
Article 3(E)	Deferred Development Payments: "…*during the Primary Term of this lease and for one (1) year thereafter*…"	This language could be interpreted to prevent the Deferred Development Clause from being triggered if the unit is formed more than one year after the end of the primary term, though it is not clear that the OMR has interpreted the Deferred Development Clause in that fashion. It appears that Deferred Development Payments can only be made for one year beyond the end of the primary term rather than two years under the current form.
Article 5(D)	Lessee agrees to protect the Leased Premises from drainage…by a well or wells on adjoining property that may be more than six hundred and sixty (660') feet from the Leased Premises	Recommend "more than" is replaced by "within" to allow a clear point where obligations begin and end. Otherwise operators are under a vague and potentially onerous burden that may result in the drilling of unnecessary wells, with their negative consequences.

Article 12	Abandonment and restoration, including expanded obligations on the lessee and another $100/day penalty from the end of one (1) year from lease termination until all plugging and restoration has been completed.	The operator and OMB may reasonably disagree whether lease termination has occurred, whether restoration has been completed, and if so, on which dates. Recommend that the penalty provisions should not be triggered absent a notice of default given by the Lessor.
Article 14(A)	Lessee's responsibility for escaped pollutants	Recommend replacing "*all means at its disposa*l" with "*best practicable and available technology which is economically achievable*", which may be a more helpful standard for operators. Recommend adding "*remediate*" as well as "*recapture*" and specifically referring to compliance with existing Federal and State regulatory standards
Article 14(A)	Reporting of discharges of pollutants	Recommend adding "*and reportable*" after "*unpermitted*" to capture the applicable statutory reporting regime
Article 14(C)	Responsibility for environmental damage. The Lessor, in addition to the Commissioner of Conservation, is given the right to prohibit further operations until it determines that such operations will be conducted in a physically and environmentally safe manner.	The Legislature has delegated its police power in this area to the Commissioner, and to avoid inconsistent obligations or instructions, we recommend that the Board and OMR should not be assuming this type of oversight. Additionally, this clause contains an express original condition restoration obligation, which might be perceived as excessively onerous on potential lessees.
Article 15(F)	General Liability Insurance – this adds an insurance requirement not contained in the current State Lease form. Failure to maintain the required coverage gives the Lessor the option to terminate the lease.	This proposal could potentially be harsh on a Lessee. Further, 30 days is a quick turnaround to attempt to secure insurance, failing which the Lessor may terminate the lease. Recommend allowing greater than 30 days and removing the Lessor's option to terminate the lease.
Throughout	Fines and liquidated damages for various matters set at $100 per day from notice or the occurrence of an event	Recommend that all fines and liquidated damages require prior written notice to prevent uncertainty as to when or whether such state of affairs exists