

ONEBANE LAW FIRM

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June 4, 2019

Via Email

Ms. Suzanne Hyatt
Office of Mineral Resources
Department of Natural Resources
617 North Third Street
Baton Rouge, LA 70802

Re: Proposed New State Lease Form
Comments to Articles 10, 16, 18, 20-23

Dear Suzanne:

See attached Memo with my comments to the above Articles.

Sincerely,



Thomas G. Smart

TGS:

ONEBANE
LAW FIRM
A Professional Corporation

MEMORANDUM

TO: Louisiana State Mineral and Energy Board
FROM: Thomas Smart
DATE: June 4, 2019
RE: New Proposed State Lease Form-Articles 10, 16, 18, 20-23

Article 16(A)

We request the deletion of the following:

Lessee represents that it has investigated title to the Leased Premises and is satisfied with such title as Lessor may have.

Lessees commonly do due diligence to determine whether the acreage appears to be owned by the State and open for lease. But Lessees do not normally examine title to State lands prior to nominating or submitting a bid, as this can be a costly and time consuming process. They do not fully investigate or examine title to possible adverse private claims. They do not examine title in detail to confirm all prior State Leases covering a nomination area have been properly released or otherwise have not been maintained. They usually do not incur the cost to do so until they have been awarded the lease and have a prospect to be drilled or have royalties to be paid.

We also request the deletion of the following:

Lessor hereby disclaims any covenant of quiet enjoyment or peaceful possession of the Leased Premises.

This was not in the 2000 lease form and is already covered by the exclusion of warranty.

Article 21

We request adding the language appearing in bold:

*Lessee further agrees that any litigation arising in connection with this Lease **between Lessor and Lessee** shall be instituted before the Nineteenth Judicial District Court in the Parish of East Baton Rouge, unless such litigation is required to be filed in or is removed to a federal court of this State.*

The reason for this request is there could be other litigation arising “in connection with” the lease that would just be between lessee and other parties (e.g., a bank, owners of an overriding royalty interest in the lease).

We request deleting of the following:

Lessee further agrees that the rule of construction requiring that the terms and provisions of an instrument be construed against the drafting party is not and shall not be applicable to this Lease.

This provision is appropriate where both parties have negotiated and had input into the terms and provisions of a contract. While the Board is receiving public comment, future lessees will not have negotiated or participated in the drafting of this lease form. The 2000 lease form did not contain this provision, the various current Texas governmental lease forms do not have a similar provision and the versions of various other State Lease forms assembled in connection with this process in 2016 do not contain such a provision (Alabama, Alaska, Arkansas, Colorado, Mississippi, North Dakota, Oklahoma and Pennsylvania).