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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 3/29/2019 revisions

Dear Suzanne:

In response to the revisions circulated last Friday, March 29, 2019, and in preparation for the special meeting next Tuesday, April 9, 2019, I submit the following comments:

Unitized Operations This definition was modified by Staff in response to concerns expressed that the definitions of Acceptable Lease Operations, Actual Drilling Operations, Actual Reworking Operations and Production in Paying Quantities are all qualified with conducted on or from the “Leased Premises”, when most leases would reference the lease premises or lands pooled or unitized therewith. The addition was to the “Unitized Operations” definition and states that “[f]or purposes of Unitized Operations, the definitions for the defined terms ... are expanded to include operations, production or payments attributable to wells whether located on the Leased Premises or lands pooled or unitized therewith.” While the addition to the term Unitized Operations is indicative of an intent, it is arguably lacking when you work through the operative lease maintenance language, especially if you consider the maintenance of Leased Premises within a Unit by a Unit well located off of the Leased Premises.

1. I know and appreciate the intent of adding the language to the definition of Unitized Operations. The problem is that it arguably only affects those instances where the term “Unitized Operations” is actually used, and then at that time you look to each sub-definition. The term Unitized Operations is not used in [Article 3] “(A)” or “(B)” or their many subparts. So arguably those provisions only apply

to wells located on the Leased Premises (and don't get the benefit of the expanded Unitized Operations definition).

2. [Article 3] "(C)(1)" provides that Unitized Operations for that Unit shall serve to maintain this Lease "only as to that portion of the Leased Premises embraced in such Unit". While the statement about maintaining acreage within the unit is proper and the expanded definition perhaps helpful, all of the detail from "(A)(1)-(3)" and "(B)(1)-(2)"-addressing all of those factual scenarios- is lacking, unless it is somehow imported by the use of the term Unitized Operations. In the case of a Unit well on the Leased Premises, that is not an issue, but in the case of a Unit well off of the Leased Premises it could be.
3. Even under [Article 3] "(C)(2)", the term Unitized Operations is not used throughout the provision and the use of the terms Acceptable Lease Operations and Production in Paying Quantities without the use of Unitized Operations may not pick up an off Leased Premises Unit well.

In my opinion, we need to add some language to the effect of "or lands pooled or unitized therewith" in the definitions of Acceptable Lease Operations, Actual Drilling Operations, Actual Reworking Operations and Production in Paying Quantities.

Termination of Deep Rights I strongly recommend the use of stratigraphic equivalent language. The handling of defining Deep Rights Acreage and Termination Depth is extremely problematical, even without using any stratigraphic equivalent language. This may be something we need to continue to have a dialogue on and exchange drafts and concepts, without holding up the whole process.

Aside from the stratigraphic equivalent issue, there are at least a couple of other issues to consider and address:

Multiple Wells

The existing language doesn't say how the Termination Depth is set if there is more than one applicable well. Suggestion for an additional sentence at the end of the paragraph:

"If at the time of termination, there is more than one well on the Leased Premises or on lands pooled or unitized therewith, the well which provides for the deepest Termination Depth shall be used to establish the Termination Depth."

Unit Wells

The application of the current language, using purely footage without any reference to units being formed by the Commissioner or otherwise, is likely to cause, in some cases:

1. Situations where the Termination Depth falls within the unitized interval (below the top but above the base of the interval) for a unit created by the Commissioner, creating serious legal issues about ownership of unitized production, and
2. If the productive portion of the reservoir discovered by the Lessee has a structural dip of several hundred feet, application of the current language (at least as to a vertical well and perhaps even to a horizontal well) would most likely terminate the lease as to acreage within the producing unit.

The following language is an attempt to address these concerns, but probably still needs tweaking to fit within the lease definitions and possibly to address any voluntary units:

“Provided, however, that if a well on the Leased Premises or on lands pooled therewith is designated by the Office of Conservation as a unit well, substitute unit well or alternate unit well (including cross-unit wells so designated) for a unit created by order of the Office of Conservation, then the Termination Depth shall be the stratigraphic equivalent of the geological marker established in that order as the base of the unitized interval, at whatever depth that may occur throughout the entirety of the geographic confines of the Deep Rights Acreage.”

The above comments are my own and I did not have time to consult with Cynthia or Peck regarding my concerns, comments or language. There may be other issues or other ways to address the above concerns.

Sincerely,

Thomas G. Smart

TGS: