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HOUSE BILL 398

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Derrick J. Lente

AN ACT

RELATING TO THE STATE LAND OFFICE; SETTING THE ROYALTY RATE ON FUTURE OIL AND GAS DEVELOPMENT LEASES ON STATE TRUST LANDS TO ENHANCE REVENUE FOR BENEFICIARIES; REQUIRING ROYALTY ON VENTED OR FLARED GAS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 19-10-4.3 NMSA 1978 (being Laws 1985, Chapter 195, Section 5) is amended to read:

"19-10-4.3. DEVELOPMENT FORM OF LEASE--PREMIUM RESTRICTED LAND.--The following form is designed as the "Development Form". It may be used by the commissioner for oil and gas leases on lands classified as restricted lands and categorized as Premium and issued on or after July 1, 2019:

"LEASE NO. _____ APPLICATION NO. _____

OIL AND GAS LEASE

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(Development Form)

This agreement, dated _____, [19] 20____,
between the state of New Mexico, acting by and through its
commissioner of public lands, hereinafter called the "lessor",
and _____,
whose address is _____
_____,
hereinafter called the "lessee",

WITNESSETH:

WHEREAS, the lessee has filed in the office of the
commissioner of public lands an application for an oil and gas
lease covering the lands hereinafter described and has tendered
therewith the required first payment; and

WHEREAS, all of the requirements of law relative to the
application and tender have been duly complied with;

THEREFORE, in consideration of the premises as well as the
sum of _____
dollars (\$ _____), the same being the amount of the
tender above mentioned, and the further sum of \$ _____
filing fee, and of the covenants and agreements hereinafter
contained, the lessor does hereby grant, demise, lease and let
unto the [~~said~~] lessee, exclusively, for the sole and only
purpose of exploration, development and production of oil or
gas (including carbon dioxide and helium), or both thereon and
therefrom with the right to own all oil and gas so produced and

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1 saved therefrom and not reserved as royalty by the lessor under
2 the terms of this lease, together with [~~rights-of-way~~] rights
3 of way, easements and servitudes for pipelines, telephone
4 lines, tanks, power houses, stations, gasoline plants and
5 fixtures for producing, treating and caring for such products
6 and housing and boarding employees and any and all rights and
7 privileges necessary, incident to or convenient for the
8 economical operation of [~~said~~] the land, for oil and gas, with
9 right for such purposes to the free use of oil, gas, casing-
10 head gas or water from [~~said~~] the lands, but not from the
11 lessor's water wells, and with the rights of removing either
12 during or after the term hereof, all and any improvements
13 placed or erected on the premises by the lessee, including the
14 right to pull all casing, subject, however, to the covenants
15 and conditions hereinafter set out, the following described
16 land situated in the county of _____, state of New
17 Mexico, and more particularly described as follows:

18	<u>Line</u>	<u>SUBDIVISION</u>	<u>Sec.</u>	<u>Twp.</u>	<u>Rge.</u>	<u>Acres</u>	<u>Institution</u>
19	1	_____					
20	2	_____					
21	3	_____					
22	4	_____					
23	5	_____					
24	6	_____					
25	7	_____					

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1 ~~[Said]~~ The lands having been awarded to the lessee and
2 designated as Tract No. _____ at a public sale held by
3 the commissioner of public lands on _____, ~~[19]~~
4 20__.

5 To have and to hold ~~[said]~~ the land, and all the rights
6 and privileges granted hereunder, to and unto the lessee for a
7 primary term of five years from the date hereof, and as long
8 thereafter as oil and gas, or either of them, is produced in
9 paying quantities from ~~[said]~~ the land by the lessee, subject
10 to all of the terms and conditions as hereinafter set forth.

11 In consideration of the premises, the parties covenant and
12 agree as follows:

13 1. Subject to the free use without royalty, as
14 hereinbefore provided, the lessee shall pay the lessor as
15 royalty _____ (not less than three-sixteenths nor more than
16 one-fifth) part of the oil produced and saved from the leased
17 premises or the cash value thereof, at the option of the
18 lessor, such value to be the price prevailing the day oil is
19 run into a pipeline, if the oil be run into a pipeline, or into
20 storage tanks, if the oil is stored.

21 2. Subject to the free use without royalty, as
22 hereinbefore provided, at the option of the lessor at any time
23 and from time to time, the lessee shall pay the lessor as
24 royalty _____ (not less than three-sixteenths nor more than
25 one-fifth) part of the gas produced and saved from the leased

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1 premises, including casing-head gas. Unless [~~said~~] the option
2 is exercised by the lessor, the lessee shall pay the lessor as
3 royalty _____ (not less than three-sixteenths nor more than
4 one-fifth) of the cash value of the gas, including casing-head
5 gas, produced and saved from the leased premises and marketed
6 or utilized, such value to be equal to the net proceeds derived
7 from the sale of such gas in the field; provided, however, the
8 cash value for royalty purposes of carbon dioxide gas and of
9 hydrocarbon gas delivered to a gasoline plant for extraction of
10 liquid hydrocarbons shall be equal to the net proceeds derived
11 from the sale of such gas, including any liquid hydrocarbons
12 recovered therefrom.

13 Notwithstanding the foregoing provisions, the lessor may
14 require the payment of royalty for all or any part of the gas
15 produced and saved under this lease and marketed or [~~utilized~~]
16 used at a price per m.c.f. equal to the maximum price being
17 paid for gas of like kind and quality and under like conditions
18 in the same field or area or may reduce the royalty value of
19 any such gas (to any amount not less than the net proceeds of
20 sale thereof, in the field) if the commissioner of public lands
21 shall determine such action to be necessary to the successful
22 operation of the lands for oil or gas purposes or to
23 encouragement [~~or~~] of the greatest ultimate recovery of oil or
24 gas or to the promotion or conservation of oil or gas or in the
25 public interest. If any well on the leased premises produces

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1 in excess of (an amount determined in accordance with Section
2 19-10-4.4 NMSA 1978) barrels of oil per month or in excess of
3 (an amount determined in accordance with that section) m.c.f.
4 of gas per month during any reported calendar month, the
5 royalty on oil and gas shall be one-fourth, to be taken or paid
6 as set forth above for the remaining term of the lease.

7 3. This lease shall not expire at the end of the primary
8 term hereof if there is a well capable of producing gas in
9 paying quantities located upon some part of the lands embraced
10 herein, or upon lands pooled or communitized herewith, where
11 such well is shut-in due to the inability of the lessee to
12 obtain a pipeline connection or to market the gas therefrom,
13 and if the lessee timely pays an annual royalty on or before
14 the annual rental paying date next ensuing after the expiration
15 of ninety days from the date [~~said~~] the well was shut-in and on
16 or before [~~said~~] the rental date thereafter. The payment of
17 [~~said~~] the annual royalty shall be considered for all purposes
18 the same as if gas were being produced in paying quantities and
19 upon the commencement of marketing of gas from said well or
20 wells the royalty paid for the lease year in which the gas is
21 first marketed shall be credited upon the royalty payable
22 hereunder to the lessor for such year. The provisions of this
23 section shall also apply where gas is being marketed from
24 [~~said~~] the leasehold premises and through no fault of the
25 lessee, the pipeline connection or market is lost or ceases, in

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1 which case this lease shall not expire so long as [~~said~~] the
2 annual royalty is paid as herein provided. The amount of any
3 annual royalty payable under this section shall equal twice the
4 annual rental due by the lessee under the terms of this lease
5 but not less than three hundred twenty dollars (\$320) per well
6 per year; provided, however, that any such annual royalty for
7 any month beginning on or after ten years from the date hereof
8 shall equal four times the annual rental due by the lessee
9 under the terms of this lease but not less than two thousand
10 dollars (\$2,000) per well per year; provided further, that no
11 annual royalty shall be payable under this section if
12 equivalent amounts are timely paid pursuant to another lease
13 issued by the lessor and if such other lease includes lands
14 communitized with lands granted hereunder for the purpose of
15 prorationally sharing in the shut-in well. Notwithstanding the
16 provisions of this section to the contrary, this lease shall
17 not be continued after five years from the date hereof for any
18 period of more than ten years by the payment of [~~said~~] the
19 annual royalty unless, for good cause shown, the commissioner
20 of public lands, in [~~his~~] the commissioner's discretion, grants
21 such a continuance.

22 4. The lessee shall use all reasonable means to prevent
23 the underground or above-ground waste of oil or gas and to
24 avoid the physical waste, venting or flaring of gas produced
25 from the leased premises. The lessee shall pay royalty as

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1 provided above on all oil or gas wasted, including but not
2 limited to all gas vented or flared, spills, uncontrolled
3 releases, theft and any other loss. Upon written request by
4 the lessee, the lessor may, in its sole discretion, waive the
5 royalty due for gas necessarily vented or flared on the lease.

6 [3.] 5. The lessee agrees to make full settlement on the
7 twentieth day of each month for all royalties due the lessor
8 for the preceding month, under this lease, and to permit the
9 lessor or its agents, at all reasonable hours, to examine the
10 lessee's books relating to the production and disposition of
11 oil and gas produced. The lessee further agrees to submit to
12 the lessor annually upon forms furnished by the lessor,
13 verified reports showing the lessee's operations for the
14 preceding year.

15 [4.] 6. An annual rental at the rate of _____ per
16 acre shall become due and payable to the lessor by the lessee,
17 upon each acre of the land above described and then claimed by
18 such lessee and the same shall be due and payable in advance to
19 the lessor on the successive anniversary dates of this lease,
20 but the annual rental on any assignment shall in no event be
21 less than forty dollars (\$40.00).

22 In the event the lessee shall elect to surrender any or
23 all of said acreage, [~~he~~] the lessee shall deliver to the
24 lessor a duly executed release thereof and in event said lease
25 has been recorded then [~~he~~] the lessee shall upon request

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1 furnish and deliver to the lessor a certified copy of a duly
2 recorded release.

3 ~~[5-]~~ 7. The lessee may at any time by paying to the
4 lessor all amounts then due as provided herein and the further
5 sum of forty dollars (\$40.00), surrender and cancel this lease
6 insofar as the same covers all or any portion of the lands
7 herein leased and be relieved from further obligations or
8 liability hereunder, in the manner as hereinbefore provided.
9 Provided, this surrender clause and the option herein reserved
10 to the lessee shall cease and become absolutely inoperative
11 immediately and concurrently with the institution of any suit
12 in any court of law or equity by the lessee, lessor or any
13 assignee, to enforce this lease, or any of its terms expressed
14 or implied.

15 ~~[6-]~~ 8. All payments due hereunder shall be made on or
16 before the day such payment is due, at the office of the
17 commissioner of public lands in Santa Fe, New Mexico.

18 ~~[7-]~~ 9. The lessee with the consent of the lessor shall
19 have the rights to assign this lease in whole or in part.
20 Provided, however, that no assignment of an undivided interest
21 in the lease or in any part thereof nor any assignment of less
22 than a legal subdivision shall be recognized or approved by the
23 lessor. Upon approval in writing by the lessor of an
24 assignment, the assignor shall stand relieved from all
25 obligations to the lessor with respect to the lands embraced in

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1 the assignment and the lessor shall likewise be relieved from
2 all obligations to the assignor as to such tracts, and the
3 assignee shall succeed to all of the rights and privileges of
4 the assignor with respect to such tracts and shall be held to
5 have assumed all of the duties and obligations of the assignor
6 to the lessor as to such tracts.

7 ~~[8-]~~ 10. In the event a well or wells producing oil or
8 gas in paying quantities should be brought in on adjacent land
9 ~~[which]~~ that is draining the leased premises, the lessee shall
10 drill such offset well or wells as a reasonably prudent
11 operator would drill under the same or similar circumstances,
12 provided that no such offset well shall be required if
13 compensatory royalties are paid pursuant to an agreement
14 between the lessor and the lessee.

15 ~~[9-]~~ 11. The lessee agrees to notify the lessor of the
16 location of each well before commencing drilling thereon, to
17 keep a complete and accurate log of each well drilled and to
18 furnish a copy thereof, verified by some person having actual
19 knowledge of the facts, to the lessor upon the completion of
20 any well, and to furnish the log of any unfinished well at any
21 time when requested to do so by the lessor.

22 If any lands embraced in this lease shall be included in
23 any deed or contract of purchase outstanding and subsisting
24 issued pursuant to any sale made of the surface of such lands
25 prior to the date of this lease, it is agreed and understood

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1 that no drilling operation shall be commenced on any such lands
2 so sold unless and until the lessee shall have filed a good and
3 sufficient bond with the lessor as required by law, to secure
4 the payment for such damage to the livestock, range, water,
5 crops or tangible improvements on such lands as may be suffered
6 by the purchaser holding such deed or contract of purchase, or
7 [~~his~~] the lessee's successors, by reason of the developments,
8 use and occupation of such lands by such lessee. Provided,
9 however, that no such bond shall be required if such purchaser
10 shall waive the right to require such bond to be given in the
11 manner provided by law.

12 [~~10.~~] 12. In drilling wells, all water-bearing strata
13 shall be noted in the log, and the lessor reserves the right to
14 require that all or any part of the casing shall be left in any
15 nonproductive well when the lessor deems it to the interest of
16 the beneficiaries of the lands granted hereunder to maintain
17 [~~said~~] the well or wells for water. For such casing so left in
18 wells the lessor shall pay to the lessee the reasonable value
19 thereof.

20 [~~11.~~] 13. The lessee shall be liable and agree to pay for
21 all damages to the range, livestock, growing crops or
22 improvements caused by the lessee's operations on [~~said~~] the
23 lands. When requested by the lessor, the lessee shall bury
24 pipelines below plow depth.

25 [~~12.~~] 14. The lessee shall not remove any machinery or

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1 fixtures placed on [~~said~~] the premises, nor draw the casing
2 from any well unless and until all payments and obligations due
3 the lessor under the terms of this agreement shall have been
4 paid or satisfied. The lessee's right to remove the casing is
5 subject to the provision of Paragraph [~~10~~] 12 above.

6 [~~13.~~] 15. Upon failure or default of the lessee to comply
7 with any of the provisions or covenants hereof, the lessor is
8 hereby authorized to cancel this lease and such cancellation
9 shall extend to and include all rights hereunder as to the
10 whole of the tract so claimed, or possessed by the lessee, but
11 shall not extend to, nor affect the rights of any other lessee
12 or assignee claiming any portion of the lands upon which no
13 default has been made; provided, however, that before any such
14 cancellation shall be made, the lessor shall mail to the lessee
15 so defaulting, by registered or certified mail, addressed to
16 the post office address of such lessee as shown by the records
17 of the state land office, a notice of intention of cancellation
18 specifying the default for which cancellation is to be made,
19 and if within thirty days from the date of mailing [~~said~~] the
20 notice the [~~said~~] lessee shall remedy the default specified in
21 said notice, cancellation shall not be made.

22 [~~14.~~] 16. If this lease shall have been maintained in
23 accordance with the provisions hereof and if at the expiration
24 of the primary term provided for herein oil or gas is not being
25 produced on [~~said~~] the land but the lessee is then engaged in

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1 bona fide drilling or reworking operations thereon, this lease
2 shall remain in full force and effect so long as such
3 operations are diligently prosecuted and, if they result in the
4 production of oil or gas, so long thereafter as oil and gas in
5 paying quantities, or either of them, is produced from [~~said~~]
6 the land; provided, however, such operations extending beyond
7 the primary term shall be approved by the lessor upon written
8 application filed with the lessor on or before the expiration
9 of [~~said~~] the term, and a report of the status of all of such
10 operations shall be made by the lessee to the lessor every
11 thirty days and a cessation of such operations for more than
12 twenty consecutive days shall be considered as an abandonment
13 of such operations and this lease shall thereupon terminate.

14 If during the drilling or reworking of any well under this
15 section, the lessee loses or junks the hole or well and after
16 diligent efforts in good faith is unable to complete [~~said~~] the
17 operations, then within twenty days after the abandonment of
18 [~~said~~] the operations, the lessee may commence another well
19 within three hundred thirty feet of the lost or junked hole or
20 well and drill the same with due diligence.

21 Operations commenced and continued as herein provided
22 shall extend this lease as to all lands as to which the same is
23 in full force and effect as of the time [~~said~~] the drilling
24 operations are commenced; provided, however, this lease shall
25 be subject to cancellation in accordance with Paragraph [~~13~~] 15

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1 hereof for failure to pay rentals or file reports [~~which~~] that
2 may become due while operations are being conducted hereunder.

3 [~~15.~~] 17. Should production of oil and gas or either of
4 them in paying quantities be obtained while this lease is in
5 force and effect and should thereafter cease from any cause
6 after the expiration of five years from the date hereof, this
7 lease shall not terminate if the lessee commences additional
8 drilling or reworking operations within sixty days after the
9 cessation of such production and shall remain in full force and
10 effect so long as such operations are prosecuted in good faith
11 with no cessation of more than twenty consecutive days, and if
12 such operations result in the production of oil or gas in
13 paying quantities, so long thereafter as oil or gas in paying
14 quantities is produced from [~~said~~] the land; provided, however,
15 written notice of intention to commence such operations shall
16 be filed with the lessor within thirty days after the cessation
17 of such production, and a report of the status of such
18 operations shall be made by the lessee to the lessor every
19 thirty days, and the cessation of such operations for more than
20 twenty consecutive days shall be considered as an abandonment
21 of such operations and this lease shall thereupon terminate.

22 [~~16.~~] 18. Lessees, including their heirs, assigns, agents
23 and contractors, shall at their own expense fully comply with
24 all laws, regulations, rules, ordinances and requirements of
25 the city, county, state and federal authorities and agencies,

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1 in all matters and things affecting the premises and operations
2 thereon [~~which~~] that may be enacted or promulgated under the
3 governmental police powers pertaining to public health and
4 welfare, including but not limited to conservation, sanitation,
5 aesthetics, pollution, cultural properties, fire and ecology.
6 Such agencies are not to be deemed third party beneficiaries
7 hereunder, however this clause is enforceable by the lessor in
8 any manner provided in this lease or by law.

9 [~~17.~~] 19. Should the lessor desire to exercise its rights
10 to take in-kind its royalty share of oil, gas or associated
11 substances or purchase all or any part of the oil, gas or
12 associated substances produced from the lands covered by this
13 lease, the lessee hereby irrevocably consents to the lessor
14 exercising its right. Such consent is a consent to the
15 termination of any supplier/purchaser relationship between the
16 lessor and the lessee deemed to exist under federal
17 regulations. The lessee further agrees that it will require
18 any purchaser of oil, gas or associated substances to likewise
19 waive any such rights.

20 [~~18.~~] 20. The lessor reserves a continuing option to
21 purchase at any time and from time to time, at the market price
22 prevailing in the area on the date of purchase, all or any part
23 of the minerals (oil and gas) that will be produced from the
24 lands covered by this lease.

25 [~~19.~~] 21. The lessor reserves the right to execute leases

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1 for geothermal resource development and operation thereon; the
2 right to sell or dispose of the geothermal resources of such
3 lands; and the right to grant rights of way and easements for
4 these purposes.

5 [20.] 22. All terms of this agreement shall extend to and
6 bind the heirs, executors, administrators, successors and
7 assigns of the parties hereto.

8 In witness whereof, the party of the first part has
9 [~~hereunto~~] signed and caused its name to be signed by its
10 commissioner of public lands [~~thereunto~~] duly authorized, with
11 the seal of [~~his~~] office affixed, and the lessee has signed
12 this agreement the day and year first above written.

13 STATE OF NEW MEXICO

14 By _____
15 Commissioner of Public Lands, Lessor
16 _____
17 _____ (Seal)

18 Lessee"."

19 SECTION 2. A new Section 19-10-4.4 NMSA 1978 is enacted
20 to read:

21 "19-10-4.4. [NEW MATERIAL] THRESHOLD FOR ONE-FOURTH
22 ROYALTY.--The threshold for one-fourth royalty under the
23 development lease as set forth in Section 19-10-4.2 NMSA 1978
24 shall be established as follows:

25 A. starting July 1, 2019 and for one year

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1 thereafter, the threshold for one-fourth royalty under the
2 development lease form shall be twenty thousand barrels of oil
3 per month or seventy-five thousand m.c.f. of gas per month; and

4 B. starting July 1, 2020 and thereafter, the
5 threshold for one-fourth royalty under the development lease
6 form shall be set by the commissioner by rule promulgated in
7 accordance with Section 19-10-21 NMSA 1978."