

SENATE TAX, BUSINESS AND TRANSPORTATION COMMITTEE SUBSTITUTE
FOR SENATE BILL 164

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO PUBLIC LANDS; SETTING THE ROYALTY RATE ON FUTURE
OIL AND GAS DEVELOPMENT LEASES ON STATE TRUST LANDS TO ENHANCE
REVENUE FOR BENEFICIARIES.

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, 2023:

"LEASE NO. _____ APPLICATION NO. _____

OIL AND GAS LEASE

(Development Form)

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

8 WITNESSETH:

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

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

15 THEREFORE, in consideration of the premises as well as the
16 sum of _____
17 dollars (\$ _____), the same being the amount of the
18 tender above mentioned, and the further sum of \$ _____
19 filing fee, and of the covenants and agreements hereinafter
20 contained, the lessor does hereby grant, demise, lease and let
21 unto the [~~said~~] lessee, exclusively, for the sole and only
22 purpose of exploration, development and production of oil or
23 gas (including carbon dioxide and helium), or both thereon and
24 therefrom with the right to own all oil and gas so produced and
25 saved therefrom and not reserved as royalty by the lessor under

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

Line	SUBDIVISION	Sec.	Twp.	Rge.	Acres	Institution
18	1					
19	2					
20	3					
21	4					
22	5					
23	6					
24	7					

25 ~~[Said]~~ The lands having been awarded to the lessee and

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underscored material = new
 [bracketed material] = delete

1 designated as Tract No. _____ at a public sale held by
2 the commissioner of public lands on _____, [~~19~~
3 20].

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

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

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

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

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

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

25 3. This lease shall not expire at the end of the primary

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1 term hereof if there is a well capable of producing gas in
2 paying quantities located upon some part of the lands embraced
3 herein, or upon lands pooled or communitized herewith, where
4 such well is shut-in due to the inability of the lessee to
5 obtain a pipeline connection or to market the gas therefrom,
6 and if the lessee timely pays an annual royalty on or before
7 the annual rental paying date next ensuing after the expiration
8 of ninety days from the date [~~said~~] the well was shut-in and on
9 or before [~~said~~] the rental date thereafter. The payment of
10 [~~said~~] the annual royalty shall be considered for all purposes
11 the same as if gas were being produced in paying quantities and
12 upon the commencement of marketing of gas from said well or
13 wells the royalty paid for the lease year in which the gas is
14 first marketed shall be credited upon the royalty payable
15 hereunder to the lessor for such year. The provisions of this
16 section shall also apply where gas is being marketed from
17 [~~said~~] the leasehold premises and through no fault of the
18 lessee, the pipeline connection or market is lost or ceases, in
19 which case this lease shall not expire so long as [~~said~~] the
20 annual royalty is paid as herein provided. The amount of any
21 annual royalty payable under this section shall equal twice the
22 annual rental due by the lessee under the terms of this lease
23 but not less than three hundred twenty dollars (\$320) per well
24 per year; provided, however, that any such annual royalty for
25 any month beginning on or after ten years from the date hereof

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

15 [~~3.~~] 4. The lessee agrees to make full settlement on the
 16 twentieth day of each month for all royalties due the lessor
 17 for the preceding month, under this lease, and to permit the
 18 lessor or its agents, at all reasonable hours, to examine the
 19 lessee's books relating to the production and disposition of
 20 oil and gas produced. The lessee further agrees to submit to
 21 the lessor annually upon forms furnished by the lessor,
 22 verified reports showing the lessee's operations for the
 23 preceding year.

24 [~~4.~~] 5. An annual rental at the rate of \$ _____
 25 per acre shall become due and payable to the lessor by the

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1 lessee, upon each acre of the land above described and then
2 claimed by such lessee and the same shall be due and payable in
3 advance to the lessor on the successive anniversary dates of
4 this lease, but the annual rental on any assignment shall in no
5 event be less than forty dollars (\$40.00).

6 In the event the lessee shall elect to surrender any or
7 all of said acreage, [~~he~~] the lessee shall deliver to the
8 lessor a duly executed release thereof and in event said lease
9 has been recorded then [~~he~~] the lessee shall upon request
10 furnish and deliver to the lessor a certified copy of a duly
11 recorded release.

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

24 [~~6-~~] 7. All payments due hereunder shall be made on or
25 before the day such payment is due, at the office of the

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1 commissioner of public lands in Santa Fe, New Mexico.

2 [7.] 8. The lessee with the consent of the lessor shall
3 have the rights to assign this lease in whole or in part.
4 Provided, however, that no assignment of an undivided interest
5 in the lease or in any part thereof nor any assignment of less
6 than a legal subdivision shall be recognized or approved by the
7 lessor. Upon approval in writing by the lessor of an
8 assignment, the assignor shall stand relieved from all
9 obligations to the lessor with respect to the lands embraced in
10 the assignment and the lessor shall likewise be relieved from
11 all obligations to the assignor as to such tracts, and the
12 assignee shall succeed to all of the rights and privileges of
13 the assignor with respect to such tracts and shall be held to
14 have assumed all of the duties and obligations of the assignor
15 to the lessor as to such tracts.

16 [8.] 9. In the event a well or wells producing oil or gas
17 in paying quantities should be brought in on adjacent land
18 [~~which~~] that is draining the leased premises, the lessee shall
19 drill such offset well or wells as a reasonably prudent
20 operator would drill under the same or similar circumstances,
21 provided that no such offset well shall be required if
22 compensatory royalties are paid pursuant to an agreement
23 between the lessor and the lessee.

24 [9.] 10. The lessee agrees to notify the lessor of the
25 location of each well before commencing drilling thereon, to

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1 keep a complete and accurate log of each well drilled and to
2 furnish a copy thereof, verified by some person having actual
3 knowledge of the facts, to the lessor upon the completion of
4 any well, and to furnish the log of any unfinished well at any
5 time when requested to do so by the lessor.

6 If any lands embraced in this lease shall be included in
7 any deed or contract of purchase outstanding and subsisting
8 issued pursuant to any sale made of the surface of such lands
9 prior to the date of this lease, it is agreed and understood
10 that no drilling operation shall be commenced on any such lands
11 so sold unless and until the lessee shall have filed a good and
12 sufficient bond with the lessor as required by law, to secure
13 the payment for such damage to the livestock, range, water,
14 crops or tangible improvements on such lands as may be suffered
15 by the purchaser holding such deed or contract of purchase, or
16 [~~his~~] the lessee's successors, by reason of the developments,
17 use and occupation of such lands by such lessee. Provided,
18 however, that no such bond shall be required if such purchaser
19 shall waive the right to require such bond to be given in the
20 manner provided by law.

21 [~~10-~~] 11. In drilling wells, all water-bearing strata
22 shall be noted in the log, and the lessor reserves the right to
23 require that all or any part of the casing shall be left in any
24 nonproductive well when the lessor deems it to the interest of
25 the beneficiaries of the lands granted hereunder to maintain

1 ~~[said]~~ the well or wells for water. For such casing so left in
2 wells the lessor shall pay to the lessee the reasonable value
3 thereof.

4 ~~[11-]~~ 12. The lessee shall be liable and agree to pay for
5 all damages to the range, livestock, growing crops or
6 improvements caused by the lessee's operations on ~~[said]~~ the
7 lands. When requested by the lessor, the lessee shall bury
8 pipelines below plow depth.

9 ~~[12-]~~ 13. The lessee shall not remove any machinery or
10 fixtures placed on ~~[said]~~ the premises, nor draw the casing
11 from any well unless and until all payments and obligations due
12 the lessor under the terms of this agreement shall have been
13 paid or satisfied. The lessee's right to remove the casing is
14 subject to the provision of Paragraph ~~[10]~~ 11 above.

15 ~~[13-]~~ 14. Upon failure or default of the lessee to comply
16 with any of the provisions or covenants hereof, the lessor is
17 hereby authorized to cancel this lease and such cancellation
18 shall extend to and include all rights hereunder as to the
19 whole of the tract so claimed, or possessed by the lessee, but
20 shall not extend to, nor affect the rights of any other lessee
21 or assignee claiming any portion of the lands upon which no
22 default has been made; provided, however, that before any such
23 cancellation shall be made, the lessor shall mail to the lessee
24 so defaulting, by registered or certified mail, addressed to
25 the post office address of such lessee as shown by the records

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1 of the state land office, a notice of intention of cancellation
2 specifying the default for which cancellation is to be made,
3 and if within thirty days from the date of mailing [~~said~~] the
4 notice the [~~said~~] lessee shall remedy the default specified in
5 said notice, cancellation shall not be made.

6 [~~14.~~] 15. If this lease shall have been maintained in
7 accordance with the provisions hereof and if at the expiration
8 of the primary term provided for herein oil or gas is not being
9 produced on [~~said~~] the land but the lessee is then engaged in
10 bona fide drilling or reworking operations thereon, this lease
11 shall remain in full force and effect so long as such
12 operations are diligently prosecuted and, if they result in the
13 production of oil or gas, so long thereafter as oil and gas in
14 paying quantities, or either of them, is produced from [~~said~~]
15 the land; provided, however, such operations extending beyond
16 the primary term shall be approved by the lessor upon written
17 application filed with the lessor on or before the expiration
18 of [~~said~~] the term, and a report of the status of all of such
19 operations shall be made by the lessee to the lessor every
20 thirty days and a cessation of such operations for more than
21 twenty consecutive days shall be considered as an abandonment
22 of such operations and this lease shall thereupon terminate.

23 If during the drilling or reworking of any well under this
24 section, the lessee loses or junks the hole or well and after
25 diligent efforts in good faith is unable to complete [~~said~~] the

1 operations, then within twenty days after the abandonment of
2 [~~said~~] the operations, the lessee may commence another well
3 within three hundred thirty feet of the lost or junked hole or
4 well and drill the same with due diligence.

5 Operations commenced and continued as herein provided
6 shall extend this lease as to all lands as to which the same is
7 in full force and effect as of the time [~~said~~] the drilling
8 operations are commenced; provided, however, this lease shall
9 be subject to cancellation in accordance with Paragraph [~~13~~] 14
10 hereof for failure to pay rentals or file reports [~~which~~] that
11 may become due while operations are being conducted hereunder.

12 [~~15-~~] 16. Should production of oil and gas or either of
13 them in paying quantities be obtained while this lease is in
14 force and effect and should thereafter cease from any cause
15 after the expiration of five years from the date hereof, this
16 lease shall not terminate if the lessee commences additional
17 drilling or reworking operations within sixty days after the
18 cessation of such production and shall remain in full force and
19 effect so long as such operations are prosecuted in good faith
20 with no cessation of more than twenty consecutive days, and if
21 such operations result in the production of oil or gas in
22 paying quantities, so long thereafter as oil or gas in paying
23 quantities is produced from [~~said~~] the land; provided, however,
24 written notice of intention to commence such operations shall
25 be filed with the lessor within thirty days after the cessation

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1 of such production, and a report of the status of such
2 operations shall be made by the lessee to the lessor every
3 thirty days, and the cessation of such operations for more than
4 twenty consecutive days shall be considered as an abandonment
5 of such operations and this lease shall thereupon terminate.

6 ~~[16-]~~ 17. Lessees, including their heirs, assigns, agents
7 and contractors, shall at their own expense fully comply with
8 all laws, regulations, rules, ordinances and requirements of
9 the city, county, state and federal authorities and agencies,
10 in all matters and things affecting the premises and operations
11 thereon ~~[which]~~ that may be enacted or promulgated under the
12 governmental police powers pertaining to public health and
13 welfare, including but not limited to conservation, sanitation,
14 aesthetics, pollution, cultural properties, fire and ecology.
15 Such agencies are not to be deemed third party beneficiaries
16 hereunder, however this clause is enforceable by the lessor in
17 any manner provided in this lease or by law.

18 ~~[17-]~~ 18. Should the lessor desire to exercise its rights
19 to take in-kind its royalty share of oil, gas or associated
20 substances or purchase all or any part of the oil, gas or
21 associated substances produced from the lands covered by this
22 lease, the lessee hereby irrevocably consents to the lessor
23 exercising its right. Such consent is a consent to the
24 termination of any supplier/purchaser relationship between the
25 lessor and the lessee deemed to exist under federal

1 regulations. The lessee further agrees that it will require
2 any purchaser of oil, gas or associated substances to likewise
3 waive any such rights.

4 ~~[18.]~~ 19. The lessor reserves a continuing option to
5 purchase at any time and from time to time, at the market price
6 prevailing in the area on the date of purchase, all or any part
7 of the minerals (oil and gas) that will be produced from the
8 lands covered by this lease.

9 ~~[19.]~~ 20. The lessor reserves the right to execute leases
10 for geothermal resource development and operation thereon; the
11 right to sell or dispose of the geothermal resources of such
12 lands; and the right to grant rights of way and easements for
13 these purposes.

14 ~~[20.]~~ 21. All terms of this agreement shall extend to and
15 bind the heirs, executors, administrators, successors and
16 assigns of the parties hereto.

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

22 STATE OF NEW MEXICO

23 By _____

24 Commissioner of Public Lands, Lessor

25 _____

underscoring material = new
[bracketed material] = delete

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_____ (Seal)

Lessee".

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.

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underscored material = new
~~[bracketed material]~~ = delete