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BLM Guidance Issued on Royalty Reductions and Lease Suspensions

On April 21st, the BLM issued interim guidance on royalty reductions and lease suspensions during the COVID-19 national emergency.

Royalty Rate Reductions

The authorized officer in BLM state offices will process requests for temporary royalty rate reductions for BLM leases upon submission of an application, which must include:

- A self-certification statement with supporting documentation from the operator that the lease(s) would be capable of production in paying quantities were it not for the extreme circumstances presented due to the COVID-19 pandemic;
- A simple economic analysis table that shows the lease(s) that are uneconomic at the current royalty rate but would be economic with the royalty rate reduction. This table needs to include the relevant market oil price, the royalty rate, the production capability, and the operating costs; and
- The requested temporary royalty rate.

The requested royalty rate must be in 0.5% increments, can be as low 0.5%, and can even be requested for Class II reinstated leases. If approved, the royalty rate reduction will be effective on the first day of the month in which the application was filed or the date specific in the approval and will terminate one year from the effective date (unless extended).

Lease Suspensions

The authorized officer in BLM state offices will process requests for BLM lease suspension (both suspensions of operations and suspension of production) due to *force majeure* in accordance with Section 17 of the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. § 226(i).

1. Suspension of Operations. A suspension of operations may be approved when a lessee is prevented from operating on the lease despite the exercise of due care and diligence, by reason of *force majeure* (i.e. COVID-19 pandemic social distancing orders and travel restrictions imposed by the federal, state or local government, or the pandemic otherwise causing the unavailability of personnel, contractors or equipment needed to conduct operations). This suspension is available only for leases in which production has not been established and which will expire within two years.
2. Suspension of Production. A suspension of production may be approved when a lessee is prevented from producing from the lease, despite the exercise of due care and diligence, by reason of *force majeure*, i.e., COVID-19 pandemic social distancing orders and travel restrictions. Production must have been established on the lease prior to application.

Although these suspensions halt the running of the lease term for the duration of the suspension, it does not suspend payment of rentals or minimum royalties. However, if an operator has submitted an APD, and the BLM is experiencing unusual or unreasonable processing delays of the APD to complete the environmental review, analysis or consultations due to the COVID-19 emergency, the BLM may consent to a suspension of operations and production in the interest of conservation under Section 39 of the MLA, which not only tolls the running of the lease term and prevents the lease from expiring during the suspension, it also tolls payment of rentals.

An application for suspension must be filed prior to lease expiration and be signed by all operating rights owners (or by a unit operator on behalf of committed tracts) and must include:

- A full statement of the circumstances that render such relief necessary relative to the COVID-19 national emergency, despite the lessee's due care and diligence;
- Lease number(s) and applicable unit or communitization agreement;
- Expiration date of lease and/or HBP date;
- Current lessee(s) and operating rights owners; and
- Supporting evidence of COVID-19 impact (i.e., efforts to get personnel or service providers to the lease to conduct operations, and their unavailability).

If approved, suspension will be effective on the first day of the month in which the application was filed or the date specific in the approval and will sunset one year from the date BLM approves the suspension, or earlier if the operator resumes operations prior to the one-year date.

For any legal inquiries regarding how the rule will affect your interests and operations, please feel free to call Crowley Fleck PLLP for a consultation.

Lori A. McMullen
Oil and Gas Practice Group
(307) 673-3000
lmcmullen@crowleyfleck.com

Jim Mowry
Oil and Gas Practice Group
(307) 673-3000
jmowry@crowleyfleck.com

Uriah J. Price
Oil and Gas Practice Group
(406) 556-1430
uprice@crowleyfleck.com

Wade C. Mann
Oil and Gas Practice Group
(701) 224-7530
wmann@crowleyfleck.com



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