



MASSIVE MINERALS

Information Required to be Delivered to Lessor



Roadmap

- Information to be delivered
- When is delivery required
- Penalties for noncompliance



What do we mean by information required?

- Reports and other information that an oil and gas Lessee is required to furnish to the Lessor either:
 - Automatically, within a reasonable or specified amount of time upon generation
 - Automatically, within a reasonable or specified amount of time after triggering event
 - Upon request from Lessor, within a reasonable or specified amount of time thereafter



Who typically requires reports?

- Federal government
- State governments
 - Leases from the Texas GLO Commissioner
 - University Lands leases
- More sophisticated fee owners





Information Required

- BLM Leases (Sec. 5)
 - Contract or evidence of other arrangement for sale or disposal of production
 - Statements of amount and quality of products
 - Plats and schematic diagrams
 - Reports regarding parties in interest, expenditures, and depreciation costs
 - Daily drilling record, log, well surveys, and tests
 - Record of subsurface investigations
 - Books, accounts, maps, and records
 - Contracts, sales agreements, accounting records, billings, invoices



Information Required

- GLO Leases (Rel. Act – Para. 6)
 - Oil and Gas Reserves estimates
 - Copies of contracts under which gas is sold
 - All other contracts
 - Well, tank, pool, meter, and pipeline info
 - Written notice of operations
 - Including copies of RRC forms for applications to drill
 - Copies of well tests, completion reports, and plugging reports
 - Division orders
 - Records, memoranda, accounts, reports, cuttings and cores, etc.
 - Well logs
 - (Para. 5, 7(c), 17) – Affidavit/reports confirming gross amount and disposition; releases; assignments.



Information Required

- University Lands Lease (Para 6(a))
 - Records, information, applicable contracts and all other materials
 - Any data or information related to all of Lessee's operations and activities under the Lease
 - Lessee's books, records, accounts, and agreements
 - Royalty payment report
 - (Para 8) – partial releases / designation of Production Acreage / recorded release documents
 - (Para 10(i)) – written estimate of Lessee's subsurface water, caliche, gravel, and sand needs
 - (Para 15(a)) – recorded copies of assignments



Information Required

- Fee owners

20. Access to Information. Lessee agrees to furnish to Lessor, upon reasonable written request, daily drilling reports, copies of all logs run, and surveys made pertaining to wells drilled on the leased premises, and copies of reports and forms filed by Lessee with the state regulatory agencies in connection with such wells. Lessor agrees to hold all such information confidential so long as this Lease is in force as to any part of the leased premises or until such information is otherwise publicly available, whichever occurs first. Lessee shall also provide Lessor, upon Lessor's written request, free of charge, copies of any title opinions and abstracts pertaining to the leased premises obtained by Lessee.



Information Required

- Fee owners

36. Lessee agrees to keep Lessor fully informed regarding any sales of production to any subsidiary, any arrangement by which Lessee sells the production and then requires any part of it or the right to receive the proceeds of any part of it, any arrangement whereby Lessee is paid any payment in lieu of production or any payment for a buy down of a contract or as a bonus for entering into the contract, any take or pay agreement Lessee may make and any take or pay payments Lessee may receive thereunder, and all other agreements and arrangements whereby Lessee receives any benefit or profit from the sale or other disposition of production or its proceeds which Lessee does not share with the royalty owners, whether or not Lessee believes that such payment or benefit is required to be shared with the royalty owners, all wells on adjacent land which are draining the leased premises or all wells in which Lessee has any interest which are or may be draining the leased premises even though they are not on adjacent land, or water flood and other secondary recovery operations on adjacent lands or in the field which might affect production from any well on the leased premises, and any other conditions or operations in the area which will or in reasonable probability may adversely affect the production from any well or wells on the leased premises of which Lessee has or acquires knowledge. No cause of action, which any royalty owner may have based upon anything required to be disclosed under this paragraph, shall accrue until Lessee complies with the provisions of this paragraph or until such Lessor acquires actual notice of the facts upon which such cause of action is based.



Information Required

- Automatically upon generation or occurrence of a triggering event:
 - Operator shall submit reports or copies of all daily drilling or activity reports, records, memoranda, accounts, core analysis, drill stem tests, mud or sample logs, deviation surveys or other information relative to the drilling and completion operations conducted on the leased premises.
 - Drilling or activity reports are to be transmitted on a daily basis from the date of move-in on a location through the date of completion.
 - Operator shall submit a written notice when the status of a well changes, whether or not such a notice is filed with the Railroad Commission of Texas.



When must reports be delivered?

- Within a certain number of days after generation or occurrence of a triggering event:
 - Written notice of all operations on this lease shall be submitted to the GLO by Lessee or operator five (5) days before spud date, workover, re-entry, temporary abandonment or plug and abandonment of any well or wells. Such written notice to the GLO shall include copies of Railroad Commission forms for application to drill.
 - Lessee shall have a basic electrical log as defined by the Railroad Commission made on the bore-hole section, from the base of the surface casing to the total depth of well, of all wells drilled on the above described Leased Premises or such other log or logs as a reasonable and prudent operator would run and shall transmit a complete suite of such logs on each well to the GLO within fifteen (15) days after the making of said logs.



When must reports be delivered?

- Operator shall submit a digital copy of all electric, radioactive or other borehole surveys no later than fifteen (15) days after reaching the total depth for the well.
- If a well ceases to produce, or is placed on production after being shut-in, the exact nature and date of such change shall be submitted within five (5) days of such change.





When must reports be delivered?

- Upon request of Lessor
 - At such times and in such form as lessor may prescribe, lessee must furnish detailed statements showing amounts and quality of all products removed and sold, proceeds therefrom, and amount used for production purposes or unavoidably lost.
 - Lessee must maintain, and make available to the GLO upon request, copies of all documents, records or reports confirming the Gross Production, disposition and market value including Gas meter readings, pipeline receipts, Gas line receipts and other checks or memoranda of the amount produced and put into pipelines, tanks, or pools and Gas lines or Gas storage, and any other reports or records which the GLO may require to verify the Gross Production, disposition and market value.



Well/Lease Access

- Lessee must keep open at all reasonable times for inspection by any representative of lessor, the leased premises and all wells, improvements, machinery, and fixtures thereon, and all books, accounts, maps, and records relative to operations, surveys, or investigations on or in the leased lands.



Consequences of Non-Compliance

- Monetary
- Lease cancellation



Monetary

- Lessee shall incur a penalty whenever reports, documents or other materials are not filed in the GLO when due. The penalty for late filing shall be set by the GLO administrative rule which is effective on the date when the materials were due to the GLO.



Monetary

- Lessee shall pay penalties and interest due on late royalty payments and other sums due, and for failure to provide documents, (whether physical documents or information in electronic form), as provided by law or the Rules. The right to collect penalties and interest is in addition to, and shall not in any way limit or restrict, the rights of the GLO to pursue other remedies at law or in equity, including without limitation forfeiture of this lease.



Monetary

- Failure to furnish University Lands with all logs required by the applicable lease form shall result in the lessee, at lessor's option, to reenter the well and run the required log or logs, or, require the lessee to pay to lessor the sum of \$15,000 (or the amount so prescribed in the applicable lease form).



Lease Cancellation

- **Proceedings in case of default** – If lessee fails to comply with any provisions of this lease, and the noncompliance continues for 30 days after written notice thereof, this lease will be subject to cancellation unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement which contains a well capable of production of unitized substances in paying quantities. This provision will not be construed to prevent the exercise by lessor of any other legal and equitable remedy, including waiver of the default. Any such remedy or waiver will not prevent later cancellation for the same default occurring at any other time.



Lease Cancellation

- **22. FORFEITURE:** If Lessee shall fail or refuse to make the payment of any sum within thirty (30) days after it becomes due, or if Lessee or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if Lessee shall fail or refuse to drill any offset well or wells in good faith as required by law and the rules and regulations adopted by the GLO, or if Lessee should fail to file reports in the manner required by law or fail to comply with rules and regulations promulgated by the GLO, the SLB or the Railroad Commission, or refuse the proper authority access to the records pertaining to operations, or if Lessee or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish the GLO a correct log of any well, or if Lessee shall knowingly violate any of the provisions of this lease, or if this lease is assigned and the assignment is not filed in the GLO as required by law, or if Lessee shall fail or refuse to execute and file a release as required under this lease and by GLO rules, the rights acquired under the entirety of this lease shall be subject to forfeiture by the GLO, and it shall forfeit same when sufficiently informed of the facts which authorize a forfeiture, and when forfeited the area shall again be subject to lease.



Lease Cancellation

- **MATERIALITY; CONFIDENTIALITY.** Lessee's obligations to provide data and information under this Lease are material, and failure to comply with these provisions may result in monetary or other penalties, including default of this Lease after receipt of the notice detailed in Section 14.b. below. Lessor will protect and hold all information and data provided by Lessee pursuant to this Section 6 and this Lease in the strictest confidence as required by Texas and federal law.



Liquidated Damages or Penalty?

- Trafalgar House Oil & Gas Inc. v. De Hinojosa
 - Upon each failure of the LESSEE, its successors and assigns to comply with the foregoing “notice of assignment”, said LESSEE, his successors and assigns shall jointly and severally forfeit and pay unto the Lessor the sum of ONE THOUSAND AND NO/100 (\$1,000.00) DOLLARS as **liquidated damages**.
 - Lease was assigned between Trafalgar House Oil & Gas Inc., Hamill Energy Co., and Linda D. Schibi, Trustee
 - Notification not provided
 - Trial court awarded liquidated damages
 - Court of Appeals affirmed



Liquidated Damages or Penalty?

- Stewart v. Basey
 - Distinguished by Trafalgar
 - E. C. Stewart and wife, leased to respondent, James Marvin Basey, three store buildings on South Congress Avenue in the city of Austin
 - The failure of Lessee to make said payment or payments or the breach of this contract otherwise by him shall render him liable to Lessors, as agreed liquidated damages, the sum of One Hundred Fifty (150) Dollars per month for each and every month of the unexpired term of this lease which shall become due and payable when the option to terminate this lease is exercised or at the time of the breach of this contract otherwise by Lessee if any.
 - The violation of any term of this lease by either party hereto shall terminate the same at the option of the other.



Liquidated Damages or Penalty?

- Stewart v. Basey continued ...
 - To be enforceable as liquidated damages the damages must be uncertain and the stipulation must be reasonable.
 - An agreement, made in advance of breach fixing the damages therefor, is not enforceable as a contract and does not affect the damages recoverable for the breach, unless
 - (a) the amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach, and
 - (b) the harm that is caused by the breach is one that is incapable or very difficult of accurate estimation.
 - Since the contract provided the same reparation for the breach of each and every covenant, and since it would be unreasonable and a violation of the principle of just compensation to enforce it as to some of them, the provision for stipulated damages should be treated as a penalty.



QUESTIONS?

YOUR PARTNER IN CREATING MASSIVE, OUTSIZED VALUE