**Keith’s Corner**

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READ YOUR LEASES:

During this unprecedented time many operators are frantically seeking advice from anyone and everyone regarding the best approach to protect their leases during this difficult time. I have been bombarded with calls inquiring whether the current circumstances constitute a force majeure, how long a lease can be shut down, etc. However, my first question to them has been whether their lease even has a force majeure clause, if so what the clause defines as a force majeure and what other terms are in the subject lease concerning cessation of production and the like. Often the operator cannot answer these questions and it becomes clear that they are looking for generic advice that can be applied to all of their leases. Unfortunately, attempting to apply generic advice to all leases is a recipe for disaster. Each oil and gas lease is a separate and independent contract and although most leases do share some common provisions there are just as many differences from one lease to the next as there are commonalities.

My prediction is that most of the leases which are lost during this period of time will terminate due to failure to comply with a unique or special provision in the lease. Operators should be more focused on complying with these special provisions, (specifically those establishing monetary payment obligations, production thresholds and cessation provisions) than generic questions concerning paying quantities and force majeure. Even if a lease contains a force majeure clause, these provisions typically do not relieve a party from obligations to make monetary payments. Thus, if the lease has minimum royalty or shut in provisions it is imperative that those terms be complied with even if the lease has a force majeure clause. Therefore, an operator’s time is best spent reviewing THEIR leases to identify any of these terms that exist. Unfortunately, there is no silver bullet that can be used across all leases and thus no shortcut to determining the best way to proceed during this time on each individual lease.

TALK WITH YOUR LESSORS:

I have been drafting agreements for some clients whereby the lessor and lessee agree that the lease may be shut-in or production severely curtailed until certain triggers occur, such as hydrocarbon prices exceeding a stated threshold or the passage of a set amount of time. These agreements suspend the occurrence of a variety of events which could otherwise lead to lease termination during the agreed upon period. In many instances the lessors have proven willing and even eager to sign these agreements. After all, the good Lord has blessed the lessor with a finite volume of hydrocarbons in the reservoir beneath their property and their royalty is based on the sale price received for such hydrocarbons; thus it is in their best interest that these hydrocarbons not be “given” away for a song at the current price levels. Prudent lessors will prefer to maximize the value of their finite resources by holding produced hydrocarbons until prices improve or ceasing production until price improves.

If you are contemplating shutting in or severely curtailing production from a lease it would be wise to approach your Lessor with one of these agreements and discuss the situation with them. Although, I have no crystal ball I can assure you that one of two outcomes will ensue: 1) the lessor will sign the agreement, thus negating the need to review and comply with the subject lease terms during such period, or 2) the lessor will refuse to sign the agreement, thus signaling to the operator that it is imperative that they strictly comply with the terms of that individual lease agreement and seek clarification and advise concerning such lease if necessary. Either of these outcomes is beneficial as the operator clearly knows where they stand BEFORE the lease has been breached and the lessor has the leverage in the relationship.

In summary, my recommendation to operators during these times is to approach your lessors and get agreements with them where possible concerning how the lease will be operated (or not operated). For leases where an agreement with the lessor is not possible, operators should familiarize themselves with the terms of those leases and seek legal advice and clarification when necessary in order to develop a plan of action specific to the individual lease.

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