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TO: Lessors with ALOV and SURE Form Oil and Gas Leases  
FROM: Attorney Alan D. Wenger  
RE: Issues Concerning Expiration and Termination of Lease

**This information is provided for notice and education purposes, and should not be considered as attorney-client legal advice. You are highly encouraged to contact legal counsel familiar with these issues with any questions, and to seek experienced legal guidance as to preparing notices, affidavits or other steps involved.**

**Background**

The ALOV and SURE form leases contained a five year primary term (Article II, Section 1). For some the five years may be expiring. The lease allows the Lessee to extend the primary term (Article II, Section 2) by one of two methods:

- a. By including any portion of the leased property (technically even an acre or a fraction of an acre) in a drilling unit upon which a well has been commenced within the five year primary term; thus "holding the lease by production;"
- b. By the Lessee's exercising its option to extend the primary term (most ALOV leases for an additional three years) by the Lessee's notifying the Lessor in writing and paying to Lessor an amount equal to the total initial bonus payment prior to the end of the fifth year following the original effective date of the Lease.

Some Lessors have land included in a drilling unit during the primary term where a well was drilled but never completed, or completed but not capable of production, or capable of production but "shut in" because of market conditions or other reasons.

**Are you "held by production?"**

If any portion of the property described in your lease has been included in a drilling unit during the primary term, the entire leasehold is "held by production" and extended into the "automatic" secondary term beyond the primary term without the lessee having to give the Lessor notice, or pay the additional bonus payment. The lease may include numerous parcels. If a part of even one parcel within the leasehold is in a drilling unit, then all the parcels under the lease are held by production, and the Lessee is not required to do anything further in order to hold its rights during the extended secondary term.

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**If none of your land has been Included in a drilling unit  
(thus, you are not “held by production”), and you have not  
received renewal notice and payment of the additional bonus from Lessee  
before the expiration of the five-year primary term**

If this is your situation, your lease has expired, and to establish evidence on record of that fact, a termination or expiration statement needs to be filed in the Recorder’s Office of any county where the leased land is located. Under Article II, Section 8 of the ALOV Lease, the Lessee is to provide the Lessor documentation in recordable form of such expiration within thirty calendar days after the date of expiration. Furthermore, Ohio Revised Code §5301.09 requires the Lessee to release an expired lease of record. But if the Lessee fails to do so, the Lessor has the right under the Lease to do the following:

- a. Send a letter by certified mail to the Lessee at the address shown in Article VII, Section 5 of the Lease (or such other address as has been provided to you by the Lessee) that the Lease has expired (indicating the lease number, the named parties to the lease, the recording information, and the expiration date, which is the day following five years after the effective date of the Lease). Thirty days after the Lessee has received your notice, you may file your own affidavit at the Recorder’s Office that should address the following:
  - i. That the Lease has expired by its own terms (providing the relevant dates);
  - ii. That no production, operations, or other activities have taken place under the lease;
  - iii. That you have given notice to the Lessee in accordance with the terms of the Lease that it has expired, and Lessee has not submitted a recordable expiration statement; and
  - iv. Therefore, you are providing notice by your affidavit of the expiration of the lease.

This document should be in the form of an affidavit with your signature notarized. The document can then be recorded.

**If any portion of your land has been included in a drilling unit and you are  
“held by production:” Possible application of Pugh Clause**

The Lessor might be able to utilize the provisions of the Pugh clause at Article II, Section 5 of the Lease. If some, but not all of your leased land was included in a drilling unit during the initial five year primary term, you might want to exercise the Pugh clause at any time after the initial five year period has expired. If the Lessee gives you notice of extension of the primary term prior to the five year expiration, and pays you the bonus for the second time, then the Lessee has the extended primary term during which to commence operations (most ALOV leases would be eight years (5+3)).

The Pugh clause requires that the Lease be terminated as to any acreage not included in a drilling unit at the expiration of the applicable primary term (five years, or eight years if extended).

In addition, the Lease might terminate as to all depths located below the bottom of the deepest formation from which any existing drilling unit is producing, once the Lessor first gives the Lessee written notice of Lessor’s demand that Lessee develop those lower depths, and Lessee has not commenced development efforts (applied for a well permit) into those lower depths within 180 days following such demand.

In either case under the Pugh clause (an acreage termination or depth termination), the same termination statement or affidavit of procedures described above should be followed to reflect on record the portion of the leasehold released.

**If no well in a unit holding your land by production is producing**

If your Lease primary term (5 or 8 years, if renewed) has expired and the leasehold ostensibly remains held by production, but no operations (as defined in Article I, Section 6(a) of the Lease) are occurring, then you might have grounds to have the lease terminated under Lease Article II, Section 2. If the Lessee in that situation is not actively during a consecutive 90-day period engaging in operations, such as bringing a well incapable of production back to production or drilling another well, you might have grounds to terminate the Lease. Lessees might be able to “shut in” functioning wells due to market conditions and for other reasons (as contemplated in Lease Article III, Section 6), and therefore the grounds for termination of your Lease could depend greatly on facts and circumstances.

ADW/ba