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Deborah would like to thank PETEX and Dan McCue for giving her this opportunity—and for their patience throughout the project. She would also like to thank Owen Anderson for teaching her the fundamentals of oil and gas law. Finally, she would like to thank Meg Molleston for her mentorship and teaching her about “all things land.”
Dan McCue obtained a B.B.A. in Petroleum Land Management from The University of Texas at Austin. Afterwards, he spent 18 years with Amoco Production Company as a Senior Land Negotiator, assigned to various regions of the United States including Alaska. He then served Spinnaker Exploration Company as Senior Landman. While at that company, from 1998 to 2007, he was responsible for the acquisition of leases, the negotiation of commercial deals, the drafting of operating, farmout, and production handling agreements, and the coordination of competitor analysis for federal lease sales in both shelf and deepwater Gulf of Mexico (GOM). Following the sale of Spinnaker Exploration Company to Norsk Hydro ASA, Dan joined newly formed Beryl Oil and Gas, L.P. as Vice President of Land in 2007. There, he was responsible for creating Beryl’s Land Department for the integration of newly acquired Gulf of Mexico assets. In 2009, Beryl was sold to Dynamic Offshore Resources, L.L.C. Prior to joining BP America Production Company, he served as Director of Land Management for Calera Corporation of Los Gatos, California.

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Before a petroleum company can develop oil or gas reserves on land belonging to someone else, it must acquire the legal rights to explore, drill, and produce on that land. How these rights are acquired and from whom differ from country to country. In most oil-producing nations, mineral resources are owned by the national government, and petroleum companies must negotiate with government representatives to secure contracts for mineral development. The complexity, cost, and, in some cases, the instability of these arrangements can be very great.

This book focuses on land management in the United States. (Appendix J treats briefly the subject of mineral leasing in Canada.) In the United States, as in other countries, much of the land and mineral wealth are publicly owned. But, in addition to the resources belonging to state and federal governments, vast amounts of land—about two-thirds of onshore territory—are privately owned. The mineral rights to this privately owned land are also commonly owned by individuals. So companies that wish to exploit domestic oil and gas reserves must often acquire the rights to do so from private citizens. The legal instrument that both the government and private owners use to grant those rights is the oil and gas lease. The term oil and gas lease is a generic term and as used in this book also implies the terms oil, gas, and minerals lease and oil, gas, and associated liquid hydrocarbons lease.

The legal obligations established by an oil and gas lease differ markedly from those set up by an ordinary commercial lease. Because the relationship between the landowner and the oil and gas company under a lease is highly interconnected—both legally and economically—regular monitoring is needed to ensure that all the provisions of the lease are met. Companies have responded to the complexities of the leasing relationship by hiring personnel with more legal training than in the past; today, many of their employees are attorneys. Private landowners, for their part, are increasingly aware of the complexity of the arrangement and the value of their mineral resources.
They often employ specialists of their own—attorneys, accountants, financial analysts, and estate planners—to make informed decisions about the leasing of their mineral rights. State and federal governments, of course, use their own specialists to assess the value of publicly owned mineral wealth.

A grasp of the basic legal issues and terms, as well as some attention to the economic and social complexities, is essential to understanding how the petroleum industry leases and develops mineral reserves in the United States. To facilitate that understanding, related topics are grouped in sequential chapters in this book. Chapters 1 to 3 deal with land ownership: who owns land and minerals, who may lease, and under what conditions. Chapters 4 to 7 describe the leasing process: how oil and gas leases are acquired, and by whom. Chapters 8 and 9 discuss a number of related arrangements often needed to exploit leased minerals effectively—operating agreements, joint ventures, and unitization, for example. These last arrangements frequently involve the same company personnel who help to secure leases.

Terms that appear in italics are defined in the glossary at the end of the book. Throughout, the word landman is used to refer to the professional in the petroleum industry who negotiates leases with landowners and production agreements with operators in the field. In spite of how it appears, it is intended as a gender-neutral term: Today, the profession counts many women in its ranks. In the coming years, another term such as land professional or land negotiator may take its place, but the original term is still overwhelmingly used in the industry today.
The word landowner describes a person who holds the title to a specific piece of property. Some people think a property owner can do almost anything with the land he or she owns—sell or lease it, build on it or dig into it, plant it, or leave it to anyone in a last will and testament. Many laws affect what the landowner may do with his or her property, however. Besides federal and state laws and regulations, city ordinances might also influence the owner’s actions. Zoning ordinances, for example, might prohibit an owner from drilling a well in the backyard. It would seem that a rural landowner would have fewer restrictions than a landowner in an urban area and could explore, develop, and profit from his or her property without hindrance. But is the rural landowner unhindered either? And does that landowner’s property include anything that might be found beneath the surface of the land as well as whatever is standing or growing on top?
In this chapter:

- Obtaining information on leasing state lands
- Types of federal leased lands: onshore public domain land, acquired land, Indian land, and offshore land
- Government agencies involved in leasing federal lands: the Bureau of Land Management, the Bureau of Indian Affairs, and the Bureau of Ocean Energy Management
- Procedures for leasing each type of federal leased land

While much of our nation’s oil and gas is located on privately owned land, large amounts of both are to be found on state and federal lands. (Extensive private ownership of mineral resources is the exception, not the rule, among nations. See Appendix J to learn about mineral ownership in Canada.) The various state legislatures, as well as the United States Congress, have made provisions for the leasing of some (though by no means all) of this publicly held land to the petroleum industry. Chapter 1 discusses one set of conditions—in Texas—under which a mineral estate severed from the surface estate can be leased by the surface owner acting as agent for the state. On such mineral-classified lands, the government and the private citizen may share the economic rewards of successful mineral development. When the government owns both surface and mineral estates, leasing might still be possible if the appropriate procedures are carefully followed.
In this chapter:

• Purpose of the land description
• Units of measurement used in land descriptions
• Types of land descriptions used in the United States
• Metes and bounds land descriptions
• Public Land Survey System land descriptions
• Descriptions of urban subdivisions
• Importance of having a complete description of property

To be valid, a conveyance of land by lease, by deed, or by will—must include a legal description of the property being transferred. An adequate description, whether it appears in the conveying instrument or in an earlier document cited by the instrument, should permit the tract to be identified on the ground; it should also distinguish the tract from neighboring properties. In the United States, however, this task of describing land is somewhat complicated by history. The fact that various parts of U.S. territory were acquired from other countries—gradually, and by means ranging from purchase to conquest—means that there is often not a single, consistent method of identifying and describing land. There is no single, uniform set of measurements for setting out the lengths, breadths, and areas of individual pieces of property. Most landowners know the dimensions of their tracts in acres, feet, and miles, but to obtain those measurements, some owners—particularly in the southwestern states—must convert various traditional Spanish or French units of measurement to U.S. customary units. Many landowners will identify their property by means of the U.S. government’s Public Land Survey System (PLSS), but some must use a considerably older method known as metes and bounds.
In this chapter:

• Preliminary explorations before a company attempts to negotiate leases
• Roles of geologists, landmen, lease brokers, and attorneys early in the leasing process
• Preliminary title checks
• Sources of information for title checks
• Concerns of the landman and of the landowner in negotiating a lease

When negotiating an oil and gas lease in preparation to explore for hydrocarbons, many operators find that they must take into account a greater degree of business savvy and bargaining power on the part of mineral interest owners than was once the case. Whether these owners are public agencies or private citizens, today more of them are treating their mineral rights as assets to be rationally managed rather than as unfathomable mysteries best managed by others. Private owners, for example, are organizing themselves into groups like the National Association of Royalty Owners (NARO) to keep up with relevant tax laws, plan lobbying strategies, and exchange information on everything from accounting systems to the going royalty rate in the area and the royalty language in a lease. Not all owners are this concerned about their minerals, of course, and some mineral owners are still unaware that they even own mineral interests outside their home county or state. Nevertheless, owners have responded to a variety of conditions—including a series of highly publicized energy crises and a shaky national economy—by becoming better-informed custodians of their mineral resources. The work of geologists and geophysicists, landmen, and lease brokers in identifying and leasing oil and gas properties has become correspondingly more sophisticated and challenging.
In this chapter:

- Form leases
- Elements of the lease
- Preamble: the basics of the lease
- Provisions: the various “clauses” of the lease
- Signature block: execution of the lease
- Acknowledgment: verification to make the lease recordable

While many standard lease forms varying by state or geographic region are still used today in negotiating a lease (table 5.1), most sophisticated lessors hire attorneys to prepare addendums to attach to these standard lease forms or draft a lease form to meet their demands. Regardless of the form, each oil and gas lease contains several basic elements. These include a description of the land, a conveyance of specified rights, consideration for the rights conveyed, and an obligation to drill and to pay a percentage of the production to the landowner.

**Table 5.1**

*Types of Standard Lease Forms*

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<td>• Producers 88 leases</td>
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<td>• Revised Producers 88 leases</td>
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<td>Leases from individuals and associations</td>
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<td>• Landowner’s leases</td>
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<td>• Attorney’s leases</td>
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**LEASE FORMS**

An addendum is an addition to a completed document. It may correct the document, offer clarification, or add terms to it.
In this chapter:

• Special provisions added to leases
• Acceptable variations in the execution of a lease
• Importance of proper acknowledgment and recording of a lease
• Method of payment of bonuses: bank drafts
• Procedures for recording a lease
• Ratification of a lease

Many lease forms are completed and signed without additions or amendments. Often, though, the lessor will bargain to include some changes that make the lease provisions more detailed and specific. For example, the pipelines and flow lines needed for oil or gas production are ordinarily buried in the ground rather than set above the surface. Many leases describe the depth at which such lines will be buried (upon the lessor’s request for their burial) as “below plow depth.” Landowners sometimes wish to amend such phrases to make them more specific. They ask that the depth be specified as 36 inches or some other measurement that suits their particular circumstances. They may also request that the topsoil be replaced after the lines are buried.

Whether such changes are acceptable to the lessee will depend, in part, on the lessee’s bargaining position. If the property to be leased is highly promising, the lessee might be willing to make a number of concessions in the form of amendments and special clauses; a lessee who is wildcatting in unproved country is likely to refuse such requests. The desirability of the property is not the only factor, of course, in any final bargaining that might occur before a lease is signed. Company policy and resources have their effect, as does the eagerness of the landowner to lease.
In this chapter:

- Examination of title in preparation for drilling
- Title opinions
- Methods of curing title
- Procedures for obtaining a permit to drill
- Examination of title to accompany division orders
- Preparation of division orders

Once a landowner has signed a lease and received a bonus, his or her paperwork is, for the moment, complete. The landowner might monitor the situation, update files, or negotiate leases on other properties, but without access to venture capital, there isn’t much that he or she can contribute to the drilling of a well. This is not the case for the landman, whose work has often just begun. Depending on the landman’s experience and the needs of the company or client, he or she might be called upon to arrange—in the most precise terms—the financing of exploration and drilling. The trades, joint ventures, and operating agreements that might be required to drill and then develop property are a complex subject in their own right and will be considered together in Chapter 8. This chapter will assume that the money to drill has been found. It will look at the other preliminary steps the landman might take part in, particularly the examining and curing of titles to leased properties.
In this chapter:

- Reasons companies seek partnerships to explore and develop
- Support agreements: dry-hole and bottomhole contribution agreements
- Farmout agreements
- Joint operating agreements
- Forms of agreements between companies
- Special provisions in joint operating agreements

After oil and gas leases have been acquired, companies commonly seek partnerships with other companies for the joint exploration of their leased lands or for support of their exploration efforts. At first glance, some might wonder why a company would spend months or even years acquiring leases and developing a prospect, and then consider sharing its efforts with another company when the other company is considered a competitor. Actually, in many cases, it is the right business decision. For instance, Company A might seek to reduce its risk and exposed drilling dollars by entering into a joint operating agreement (JOA) with Company B, by which Company B pays a disproportionately higher percentage of well costs to casing point. After that, if the logs look good and the well is completed, Company B’s interest might decrease, while Company A’s interest might increase. Or perhaps Company B also has leases in the area and offers to give Company A money towards the drilling of Company A’s well in exchange for data from well logs.
In this chapter:

• Definitions of pooling and unitization
• Reasons for pooling and unitization
• Voluntary and involuntary pooling and unitization
• Legal processes for forming pooled units and unitized fields
• Instruments for lease terminations
• Awareness of changing regulations in leases on public lands

Oil and gas leases normally include a clause empowering the lessee to pool or unitize the lease with other leased tracts to comply with state well-spacing regulations and to conduct operations more efficiently. (See the section on pooling and unitization clauses in Chapter 5.) “Pooling” is the term usually applied to combining small tracts into a unit large enough to satisfy spacing requirements. The immediate aim of pooling is the formation of a drilling unit. Another term used in reference to the formation of a drilling unit, “unitization,” generally refers to field-wide or reservoir-wide operations that are planned and carried out as if all the tracts in a field were held under a single lease. Geologic structures know nothing of property lines, and the optimum use for some technologies of reservoir exploration and stimulation is on a large scale, so unitization can be crucial to long-term success. The final aim of both pooling and unitization is successful, efficient production. Operators hope to extract oil and gas with a minimum of waste and in amounts that will earn steady profits.
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