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ENERGY IN THE LAW

New Mexico's Options for Operators Responding to Depressed Oil Prices

By Craig Berube and Joby Rittenhouse

In response to an unprecedented drop in oil prices created by the COVID-19 pandemic, the New Mexico Oil and Gas Association and several of its oil-producing members appealed to the New Mexico government, state and federal agencies to exercise their discretion to provide relief for non-essential regulatory compliance in oil and gas production. In general, the request was made to postpone tasks in which a delay would not jeopardize health or the environment, and to extend deadlines that became virtually impossible to meet. This article summarizes some of the relief granted by the state and federal agencies in response to that request.

State Trust Land Office Rulemaking to Extend Temporary Shut-In Period

On June 12, 2020, the New Mexico State Land Office (SLO) held a hearing regarding its proposed final rule to extend the time allowed for the temporary shut-in of oil wells on State Trust Lands. This proposed final rule would allow wells to be shut-in for up to one year from the date of the final rule unless the commissioner of the Oil Conservation Division (OCD) finds that the price of oil is no longer severely reduced. Currently, the emergency rule, NMAC §19.2.100.71, allows for the temporary shut-in of oil wells for up to 120 days.

Although the effective date of the final rule has not been set, the rule will become effective upon its publication in the New Mexico Register, and the rule will expire by publication. Temporary shut-in of wells under the proposed final rule is a purely administrative act, and thus is not subject to hearing. When the final rule expires, production must resume to hold the lease within 90 days. If a well has been shut-in for a year, an additional shut-in royalty payment must be made to continue the protections for each subsequent year.

Oil Conservation Division Extension of Temporary Shut-In Period

By Notice dated March 20, 2020, the OCD announced special procedures for temporary shut-in of wells for economic hardship, applicable to all lands. The Notice provides for shut-in of wells for a period of up to 36 months. The OCD has already implemented this Notice.

Operators seeking temporary shut-in can submit a Form C-103 Sundry Notices and Reports on Wells for each well providing notice of intent to temporarily shut-in the well. If the operator uses Form C-103, the well becomes subject to inspection and subsequent reports of change in status will be reported on the form. Wells are subject to the plugging and abandonment rules after 15 months without active production pursuant to Part 25, Chapter 15, Title 19, of the NMAC.

Alternatively, an operator can enter into an Agreed Compliance Order, which requires yearly Bradenhead well pressure reporting beginning one year after the temporary shut-in, and annually thereafter until the well is put back into service up to 36 months, extendable for an additional 12 months. The operator must comply with reporting requirements, maintain bonding requirements, and perform any needed remediation. Upon expiration of the Order, the operator will have the option to restore the well to production and file Form C-115 Operator's Monthly Report, place the well in approved Temporary Abandonment pursuant to NMAC §§19.15.25.12-14, or plug the well in accordance with NMAC §19.15.25.10.

Regional Response to COVID-19 Pandemic, Depressed Oil Prices

New Mexico's response to historically low oil prices comes as the industry and regulators attempt to cope regionally with the recent steep decline in oil prices and markets battered by the demand disruptions caused by the COVID-19 pandemic. In Texas, the Railroad Commission (RRC) considered a proposal to prorate production of oil and gas within the State of Texas to meet reasonable market demand. While the proposal was ultimately rejected, the effect of such proration may have enabled producers the ability to effectively shut-in wells and cite the RRC order as basis for such shut-in (thereby potentially satisfying certain lease obligations). The Oklahoma Corporation Commission and the North Dakota Industrial Commission have also considered similar measures; however, none of these state regulatory agencies have issued any decisions altering the status quo in each of their respective states. Nonetheless, Texas, Oklahoma, and North Dakota continue to explore means to provide relief during this historic period.

Federal Response to COVID-19 Pandemic, Depressed Oil Prices

Instruction Memorandum No. NM-2020-006: The Bureau of Land Management (BLM) has made its own efforts to accommodate the fall in oil prices and other repercussions from the COVID-19 pandemic as it pertains to federal lands. Federal leases typically do not contain express shut-in clauses, so the authority to shut-in wells drilled on federal leases is found in Instruction Memorandum No. NM-2020-006. This IM states that the BLM does not require an operator to submit notification or a request prior to shutting in a well. Operators should note that if temporary abandonment or plugging and abandonment occurs on a lease without a well capable of production, that lease is subject to termination unless the operator is granted a suspension of operations and/or production by the BLM.

Guidance for Lease Suspensions: More recently, the BLM has issued its COVID-19 Guidance for Lease Suspension and Royalty Rate Reduction. The guidance for lessees to apply for oil and gas suspensions under *force majeure* due to COVID-19 advises that lessees must submit applications through the appropriate BLM State Office, including a full statement of the circumstances that render such relief necessary as a result of the COVID-19 national emergency, despite the lessee's due care and diligence. The application for suspension must be executed by all operating rights owners or by a unit operator. The granting of a suspension of operations or production does not suspend lessee's rental or minimum royalty obligations.

Guidance for Royalty Rate Reduction: BLM's Guidance for Royalty Rate Reduction provides the steps for operators to apply for a temporary royalty rate reduction through the appropriate BLM State Office, pursuant to 43 CFR 3103.4-1(b)(1)-(3). The operator must include a self-certification statement with supporting documentation that the leases would be capable of production in paying quantities if not for the pandemic, and an economic analysis showing the leases that are uneconomic at the current royalty rate. Upon approval, a temporary royalty rate may be reduced. The relief will terminate 60 days from the date that the BLM approves an application for temporary royalty rate reduction.

For more information regarding relief for pandemic and depressed oil prices, copies or links to documents described in this article, and other New Mexico oil and gas regulations, please contact Craig Berube or Joby Rittenhouse.