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SENATE BILL 500

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Bill B. O'Neill

AN ACT

RELATING TO THE STATE LAND OFFICE; SETTING THE ROYALTY RATE ON FUTURE OIL AND GAS DEVELOPMENT LEASES ON STATE TRUST LANDS TO ENHANCE REVENUE FOR BENEFICIARIES; REQUIRING ROYALTY ON VENTED OR FLARED GAS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 19-10-4.3 NMSA 1978 (being Laws 1985, Chapter 195, Section 5) is amended to read:

"19-10-4.3. DEVELOPMENT FORM OF LEASE--PREMIUM RESTRICTED LAND.--The following form is designed as the "Development Form". It may be used by the commissioner for oil and gas leases on lands classified as restricted lands and categorized as Premium and issued on or after July 1, 2019:

"LEASE NO. \_\_\_\_\_ APPLICATION NO. \_\_\_\_\_

OIL AND GAS LEASE

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(Development Form)

This agreement, dated \_\_\_\_\_, [19] 20\_\_\_\_,  
between the state of New Mexico, acting by and through its  
commissioner of public lands, hereinafter called the "lessor",  
and \_\_\_\_\_,  
whose address is \_\_\_\_\_  
\_\_\_\_\_,  
hereinafter called the "lessee",

WITNESSETH:

WHEREAS, the lessee has filed in the office of the  
commissioner of public lands an application for an oil and gas  
lease covering the lands hereinafter described and has tendered  
therewith the required first payment; and

WHEREAS, all of the requirements of law relative to the  
application and tender have been duly complied with;

THEREFORE, in consideration of the premises as well as the  
sum of \_\_\_\_\_  
dollars (\$ \_\_\_\_\_), the same being the amount of the  
tender above mentioned, and the further sum of \$ \_\_\_\_\_  
filing fee, and of the covenants and agreements hereinafter  
contained, the lessor does hereby grant, demise, lease and let  
unto the [~~said~~] lessee, exclusively, for the sole and only  
purpose of exploration, development and production of oil or  
gas (including carbon dioxide and helium), or both thereon and  
therefrom with the right to own all oil and gas so produced and

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1 saved therefrom and not reserved as royalty by the lessor under  
2 the terms of this lease, together with [~~rights-of-way~~] rights  
3 of way, easements and servitudes for pipelines, telephone  
4 lines, tanks, power houses, stations, gasoline plants and  
5 fixtures for producing, treating and caring for such products  
6 and housing and boarding employees and any and all rights and  
7 privileges necessary, incident to or convenient for the  
8 economical operation of [~~said~~] the land, for oil and gas, with  
9 right for such purposes to the free use of oil, gas, casing-  
10 head gas or water from [~~said~~] the lands, but not from the  
11 lessor's water wells, and with the rights of removing either  
12 during or after the term hereof, all and any improvements  
13 placed or erected on the premises by the lessee, including the  
14 right to pull all casing, subject, however, to the covenants  
15 and conditions hereinafter set out, the following described  
16 land situated in the county of \_\_\_\_\_, state of New  
17 Mexico, and more particularly described as follows:

18	<u>Line</u>	<u>SUBDIVISION</u>	<u>Sec.</u>	<u>Twp.</u>	<u>Rge.</u>	<u>Acres</u>	<u>Institution</u>
19	1	_____					
20	2	_____					
21	3	_____					
22	4	_____					
23	5	_____					
24	6	_____					
25	7	_____					

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1           ~~[Said]~~ The lands having been awarded to the lessee and  
2 designated as Tract No. \_\_\_\_\_ at a public sale held by  
3 the commissioner of public lands on \_\_\_\_\_, ~~[19]~~  
4 20\_\_.

5           To have and to hold ~~[said]~~ the land, and all the rights  
6 and privileges granted hereunder, to and unto the lessee for a  
7 primary term of five years from the date hereof, and as long  
8 thereafter as oil and gas, or either of them, is produced in  
9 paying quantities from ~~[said]~~ the land by the lessee, subject  
10 to all of the terms and conditions as hereinafter set forth.

11           In consideration of the premises, the parties covenant and  
12 agree as follows:

13           1. Subject to the free use without royalty, as  
14 hereinbefore provided, the lessee shall pay the lessor as  
15 royalty \_\_\_\_\_ (not less than three-sixteenths nor more than  
16 one-fifth) part of the oil produced and saved from the leased  
17 premises or the cash value thereof, at the option of the  
18 lessor, such value to be the price prevailing the day oil is  
19 run into a pipeline, if the oil be run into a pipeline, or into  
20 storage tanks, if the oil is stored.

21           2. Subject to the free use without royalty, as  
22 hereinbefore provided, at the option of the lessor at any time  
23 and from time to time, the lessee shall pay the lessor as  
24 royalty \_\_\_\_\_ (not less than three-sixteenths nor more than  
25 one-fifth) part of the gas produced and saved from the leased

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1 premises, including casing-head gas. Unless [~~said~~] the option  
2 is exercised by the lessor, the lessee shall pay the lessor as  
3 royalty \_\_\_\_\_ (not less than three-sixteenths nor more than  
4 one-fifth) of the cash value of the gas, including casing-head  
5 gas, produced and saved from the leased premises and marketed  
6 or utilized, such value to be equal to the net proceeds derived  
7 from the sale of such gas in the field; provided, however, the  
8 cash value for royalty purposes of carbon dioxide gas and of  
9 hydrocarbon gas delivered to a gasoline plant for extraction of  
10 liquid hydrocarbons shall be equal to the net proceeds derived  
11 from the sale of such gas, including any liquid hydrocarbons  
12 recovered therefrom.

13 Notwithstanding the foregoing provisions, the lessor may  
14 require the payment of royalty for all or any part of the gas  
15 produced and saved under this lease and marketed or [~~utilized~~]  
16 used at a price per m.c.f. equal to the maximum price being  
17 paid for gas of like kind and quality and under like conditions  
18 in the same field or area or may reduce the royalty value of  
19 any such gas (to any amount not less than the net proceeds of  
20 sale thereof, in the field) if the commissioner of public lands  
21 shall determine such action to be necessary to the successful  
22 operation of the lands for oil or gas purposes or to  
23 encouragement [~~or~~] of the greatest ultimate recovery of oil or  
24 gas or to the promotion or conservation of oil or gas or in the  
25 public interest. If any well on the leased premises produces

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1 in excess of (an amount determined in accordance with Section  
2 19-10-4.4 NMSA 1978) barrels of oil per month or in excess of  
3 (an amount determined in accordance with that section) m.c.f.  
4 of gas per month during any reported calendar month, the  
5 royalty on oil and gas shall be one-fourth, to be taken or paid  
6 as set forth above for the remaining term of the lease.

7 3. This lease shall not expire at the end of the primary  
8 term hereof if there is a well capable of producing gas in  
9 paying quantities located upon some part of the lands embraced  
10 herein, or upon lands pooled or communitized herewith, where  
11 such well is shut-in due to the inability of the lessee to  
12 obtain a pipeline connection or to market the gas therefrom,  
13 and if the lessee timely pays an annual royalty on or before  
14 the annual rental paying date next ensuing after the expiration  
15 of ninety days from the date [~~said~~] the well was shut-in and on  
16 or before [~~said~~] the rental date thereafter. The payment of  
17 [~~said~~] the annual royalty shall be considered for all purposes  
18 the same as if gas were being produced in paying quantities and  
19 upon the commencement of marketing of gas from said well or  
20 wells the royalty paid for the lease year in which the gas is  
21 first marketed shall be credited upon the royalty payable  
22 hereunder to the lessor for such year. The provisions of this  
23 section shall also apply where gas is being marketed from  
24 [~~said~~] the leasehold premises and through no fault of the  
25 lessee, the pipeline connection or market is lost or ceases, in

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1 which case this lease shall not expire so long as [~~said~~] the  
2 annual royalty is paid as herein provided. The amount of any  
3 annual royalty payable under this section shall equal twice the  
4 annual rental due by the lessee under the terms of this lease  
5 but not less than three hundred twenty dollars (\$320) per well  
6 per year; provided, however, that any such annual royalty for  
7 any month beginning on or after ten years from the date hereof  
8 shall equal four times the annual rental due by the lessee  
9 under the terms of this lease but not less than two thousand  
10 dollars (\$2,000) per well per year; provided further, that no  
11 annual royalty shall be payable under this section if  
12 equivalent amounts are timely paid pursuant to another lease  
13 issued by the lessor and if such other lease includes lands  
14 communitized with lands granted hereunder for the purpose of  
15 prorationally sharing in the shut-in well. Notwithstanding the  
16 provisions of this section to the contrary, this lease shall  
17 not be continued after five years from the date hereof for any  
18 period of more than ten years by the payment of [~~said~~] the  
19 annual royalty unless, for good cause shown, the commissioner  
20 of public lands, in [~~his~~] the commissioner's discretion, grants  
21 such a continuance.

22 4. The lessee shall use all reasonable means to prevent  
23 the underground or above-ground waste of oil or gas and to  
24 avoid the physical waste, venting or flaring of gas produced  
25 from the leased premises. The lessee shall pay royalty as

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1 provided above on all oil or gas wasted, including but not  
2 limited to all gas vented or flared, spills, uncontrolled  
3 releases, theft and any other loss. Upon written request by  
4 the lessee, the lessor may, in its sole discretion, waive the  
5 royalty due for gas necessarily vented or flared on the lease.

6 [3.] 5. The lessee agrees to make full settlement on the  
7 twentieth day of each month for all royalties due the lessor  
8 for the preceding month, under this lease, and to permit the  
9 lessor or its agents, at all reasonable hours, to examine the  
10 lessee's books relating to the production and disposition of  
11 oil and gas produced. The lessee further agrees to submit to  
12 the lessor annually upon forms furnished by the lessor,  
13 verified reports showing the lessee's operations for the  
14 preceding year.

15 [4.] 6. An annual rental at the rate of \_\_\_\_\_ per  
16 acre shall become due and payable to the lessor by the lessee,  
17 upon each acre of the land above described and then claimed by  
18 such lessee and the same shall be due and payable in advance to  
19 the lessor on the successive anniversary dates of this lease,  
20 but the annual rental on any assignment shall in no event be  
21 less than forty dollars (\$40.00).

22 In the event the lessee shall elect to surrender any or  
23 all of said acreage, [~~he~~] the lessee shall deliver to the  
24 lessor a duly executed release thereof and in event said lease  
25 has been recorded then [~~he~~] the lessee shall upon request

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1 furnish and deliver to the lessor a certified copy of a duly  
2 recorded release.

3 ~~[5-]~~ 7. The lessee may at any time by paying to the  
4 lessor all amounts then due as provided herein and the further  
5 sum of forty dollars (\$40.00), surrender and cancel this lease  
6 insofar as the same covers all or any portion of the lands  
7 herein leased and be relieved from further obligations or  
8 liability hereunder, in the manner as hereinbefore provided.  
9 Provided, this surrender clause and the option herein reserved  
10 to the lessee shall cease and become absolutely inoperative  
11 immediately and concurrently with the institution of any suit  
12 in any court of law or equity by the lessee, lessor or any  
13 assignee, to enforce this lease, or any of its terms expressed  
14 or implied.

15 ~~[6-]~~ 8. All payments due hereunder shall be made on or  
16 before the day such payment is due, at the office of the  
17 commissioner of public lands in Santa Fe, New Mexico.

18 ~~[7-]~~ 9. The lessee with the consent of the lessor shall  
19 have the rights to assign this lease in whole or in part.  
20 Provided, however, that no assignment of an undivided interest  
21 in the lease or in any part thereof nor any assignment of less  
22 than a legal subdivision shall be recognized or approved by the  
23 lessor. Upon approval in writing by the lessor of an  
24 assignment, the assignor shall stand relieved from all  
25 obligations to the lessor with respect to the lands embraced in

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1 the assignment and the lessor shall likewise be relieved from  
2 all obligations to the assignor as to such tracts, and the  
3 assignee shall succeed to all of the rights and privileges of  
4 the assignor with respect to such tracts and shall be held to  
5 have assumed all of the duties and obligations of the assignor  
6 to the lessor as to such tracts.

7 ~~[8-]~~ 10. In the event a well or wells producing oil or  
8 gas in paying quantities should be brought in on adjacent land  
9 ~~[which]~~ that is draining the leased premises, the lessee shall  
10 drill such offset well or wells as a reasonably prudent  
11 operator would drill under the same or similar circumstances,  
12 provided that no such offset well shall be required if  
13 compensatory royalties are paid pursuant to an agreement  
14 between the lessor and the lessee.

15 ~~[9-]~~ 11. The lessee agrees to notify the lessor of the  
16 location of each well before commencing drilling thereon, to  
17 keep a complete and accurate log of each well drilled and to  
18 furnish a copy thereof, verified by some person having actual  
19 knowledge of the facts, to the lessor upon the completion of  
20 any well, and to furnish the log of any unfinished well at any  
21 time when requested to do so by the lessor.

22 If any lands embraced in this lease shall be included in  
23 any deed or contract of purchase outstanding and subsisting  
24 issued pursuant to any sale made of the surface of such lands  
25 prior to the date of this lease, it is agreed and understood

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1 that no drilling operation shall be commenced on any such lands  
2 so sold unless and until the lessee shall have filed a good and  
3 sufficient bond with the lessor as required by law, to secure  
4 the payment for such damage to the livestock, range, water,  
5 crops or tangible improvements on such lands as may be suffered  
6 by the purchaser holding such deed or contract of purchase, or  
7 [~~his~~] the lessee's successors, by reason of the developments,  
8 use and occupation of such lands by such lessee. Provided,  
9 however, that no such bond shall be required if such purchaser  
10 shall waive the right to require such bond to be given in the  
11 manner provided by law.

12 [~~10.~~] 12. In drilling wells, all water-bearing strata  
13 shall be noted in the log, and the lessor reserves the right to  
14 require that all or any part of the casing shall be left in any  
15 nonproductive well when the lessor deems it to the interest of  
16 the beneficiaries of the lands granted hereunder to maintain  
17 [~~said~~] the well or wells for water. For such casing so left in  
18 wells the lessor shall pay to the lessee the reasonable value  
19 thereof.

20 [~~11.~~] 13. The lessee shall be liable and agree to pay for  
21 all damages to the range, livestock, growing crops or  
22 improvements caused by the lessee's operations on [~~said~~] the  
23 lands. When requested by the lessor, the lessee shall bury  
24 pipelines below plow depth.

25 [~~12.~~] 14. The lessee shall not remove any machinery or

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1 fixtures placed on [~~said~~] the premises, nor draw the casing  
2 from any well unless and until all payments and obligations due  
3 the lessor under the terms of this agreement shall have been  
4 paid or satisfied. The lessee's right to remove the casing is  
5 subject to the provision of Paragraph [~~10~~] 12 above.

6 [~~13.~~] 15. Upon failure or default of the lessee to comply  
7 with any of the provisions or covenants hereof, the lessor is  
8 hereby authorized to cancel this lease and such cancellation  
9 shall extend to and include all rights hereunder as to the  
10 whole of the tract so claimed, or possessed by the lessee, but  
11 shall not extend to, nor affect the rights of any other lessee  
12 or assignee claiming any portion of the lands upon which no  
13 default has been made; provided, however, that before any such  
14 cancellation shall be made, the lessor shall mail to the lessee  
15 so defaulting, by registered or certified mail, addressed to  
16 the post office address of such lessee as shown by the records  
17 of the state land office, a notice of intention of cancellation  
18 specifying the default for which cancellation is to be made,  
19 and if within thirty days from the date of mailing [~~said~~] the  
20 notice the [~~said~~] lessee shall remedy the default specified in  
21 said notice, cancellation shall not be made.

22 [~~14.~~] 16. If this lease shall have been maintained in  
23 accordance with the provisions hereof and if at the expiration  
24 of the primary term provided for herein oil or gas is not being  
25 produced on [~~said~~] the land but the lessee is then engaged in

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1 bona fide drilling or reworking operations thereon, this lease  
2 shall remain in full force and effect so long as such  
3 operations are diligently prosecuted and, if they result in the  
4 production of oil or gas, so long thereafter as oil and gas in  
5 paying quantities, or either of them, is produced from [~~said~~]  
6 the land; provided, however, such operations extending beyond  
7 the primary term shall be approved by the lessor upon written  
8 application filed with the lessor on or before the expiration  
9 of [~~said~~] the term, and a report of the status of all of such  
10 operations shall be made by the lessee to the lessor every  
11 thirty days and a cessation of such operations for more than  
12 twenty consecutive days shall be considered as an abandonment  
13 of such operations and this lease shall thereupon terminate.

14 If during the drilling or reworking of any well under this  
15 section, the lessee loses or junks the hole or well and after  
16 diligent efforts in good faith is unable to complete [~~said~~] the  
17 operations, then within twenty days after the abandonment of  
18 [~~said~~] the operations, the lessee may commence another well  
19 within three hundred thirty feet of the lost or junked hole or  
20 well and drill the same with due diligence.

21 Operations commenced and continued as herein provided  
22 shall extend this lease as to all lands as to which the same is  
23 in full force and effect as of the time [~~said~~] the drilling  
24 operations are commenced; provided, however, this lease shall  
25 be subject to cancellation in accordance with Paragraph [~~13~~] 15

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1 hereof for failure to pay rentals or file reports [~~which~~] that  
2 may become due while operations are being conducted hereunder.

3 [~~15.~~] 17. Should production of oil and gas or either of  
4 them in paying quantities be obtained while this lease is in  
5 force and effect and should thereafter cease from any cause  
6 after the expiration of five years from the date hereof, this  
7 lease shall not terminate if the lessee commences additional  
8 drilling or reworking operations within sixty days after the  
9 cessation of such production and shall remain in full force and  
10 effect so long as such operations are prosecuted in good faith  
11 with no cessation of more than twenty consecutive days, and if  
12 such operations result in the production of oil or gas in  
13 paying quantities, so long thereafter as oil or gas in paying  
14 quantities is produced from [~~said~~] the land; provided, however,  
15 written notice of intention to commence such operations shall  
16 be filed with the lessor within thirty days after the cessation  
17 of such production, and a report of the status of such  
18 operations shall be made by the lessee to the lessor every  
19 thirty days, and the cessation of such operations for more than  
20 twenty consecutive days shall be considered as an abandonment  
21 of such operations and this lease shall thereupon terminate.

22 [~~16.~~] 18. Lessees, including their heirs, assigns, agents  
23 and contractors, shall at their own expense fully comply with  
24 all laws, regulations, rules, ordinances and requirements of  
25 the city, county, state and federal authorities and agencies,

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1 in all matters and things affecting the premises and operations  
2 thereon [~~which~~] that may be enacted or promulgated under the  
3 governmental police powers pertaining to public health and  
4 welfare, including but not limited to conservation, sanitation,  
5 aesthetics, pollution, cultural properties, fire and ecology.  
6 Such agencies are not to be deemed third party beneficiaries  
7 hereunder, however this clause is enforceable by the lessor in  
8 any manner provided in this lease or by law.

9 [~~17.~~] 19. Should the lessor desire to exercise its rights  
10 to take in-kind its royalty share of oil, gas or associated  
11 substances or purchase all or any part of the oil, gas or  
12 associated substances produced from the lands covered by this  
13 lease, the lessee hereby irrevocably consents to the lessor  
14 exercising its right. Such consent is a consent to the  
15 termination of any supplier/purchaser relationship between the  
16 lessor and the lessee deemed to exist under federal  
17 regulations. The lessee further agrees that it will require  
18 any purchaser of oil, gas or associated substances to likewise  
19 waive any such rights.

20 [~~18.~~] 20. The lessor reserves a continuing option to  
21 purchase at any time and from time to time, at the market price  
22 prevailing in the area on the date of purchase, all or any part  
23 of the minerals (oil and gas) that will be produced from the  
24 lands covered by this lease.

25 [~~19.~~] 21. The lessor reserves the right to execute leases

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1 for geothermal resource development and operation thereon; the  
2 right to sell or dispose of the geothermal resources of such  
3 lands; and the right to grant rights of way and easements for  
4 these purposes.

5 [20.] 22. All terms of this agreement shall extend to and  
6 bind the heirs, executors, administrators, successors and  
7 assigns of the parties hereto.

8 In witness whereof, the party of the first part has  
9 [~~hereunto~~] signed and caused its name to be signed by its  
10 commissioner of public lands [~~thereunto~~] duly authorized, with  
11 the seal of [~~his~~] office affixed, and the lessee has signed  
12 this agreement the day and year first above written.

13 STATE OF NEW MEXICO

14 By \_\_\_\_\_  
15 Commissioner of Public Lands, Lessor  
16 \_\_\_\_\_  
17 \_\_\_\_\_ (Seal)

18 Lessee"."

19 SECTION 2. A new Section 19-10-4.4 NMSA 1978 is enacted  
20 to read:

21 "19-10-4.4. [NEW MATERIAL] THRESHOLD FOR ONE-FOURTH  
22 ROYALTY.--The threshold for one-fourth royalty under the  
23 development lease as set forth in Section 19-10-4.2 NMSA 1978  
24 shall be established as follows:

25 A. starting July 1, 2019 and for one year



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1 thereafter, the threshold for one-fourth royalty under the  
2 development lease form shall be twenty thousand barrels of oil  
3 per month or seventy-five thousand m.c.f. of gas per month; and

4 B. starting July 1, 2020 and thereafter, the  
5 threshold for one-fourth royalty under the development lease  
6 form shall be set by the commissioner by rule promulgated in  
7 accordance with Section 19-10-21 NMSA 1978."