

## § 3162.2-6

well on your lease for a reasonable profit above the cost of drilling, completing, and operating the protective well.

[66 FR 1893, Jan. 10, 2001]

### **§ 3162.2-6 When will I have constructive notice that drainage may be occurring?**

(a) You have constructive notice that drainage may be occurring when well completion or first production reports for the draining well are filed with either BLM, State oil and gas commissions, or regulatory agencies and are publicly available.

(b) If you operate or own any interest in the draining well or lease, you have constructive notice that drainage may be occurring when you complete drill stem, production, pressure analysis, or flow tests of the well.

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### **§ 3162.2-7 Who is liable for drainage if more than one person holds undivided interests in the record title or operating rights for the same lease?**

(a) If more than one person holds record title interests in a portion of a lease that is subject to drainage, each person is jointly and severally liable for taking any action we may require under this part to protect the lease from drainage, including paying compensatory royalty accruing during the period and for the area in which it holds its record title interest.

(b) Operating rights owners are jointly and severally liable with each other and with all record title holders for drainage affecting the area and horizons in which they hold operating rights during the period they hold operating rights.

[66 FR 1893, Jan. 10, 2001]

### **§ 3162.2-8 Does my responsibility for drainage protection end when I assign or transfer my lease interest?**

If you assign your record title interest in a lease or transfer your operating rights, you are not liable for drainage that occurs after the date we approve the assignment or transfer. However, you remain responsible for the payment of compensatory royalties

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for any drainage that occurred when you held the lease interest.

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### **§ 3162.2-9 What is my duty to inquire about the potential for drainage and inform BLM of my findings?**

(a) When you first acquire a lease interest, and at all times while you hold the lease interest, you must monitor the drilling of wells in the same or adjacent spacing units and gather sufficient information to determine whether drainage is occurring. This information can be in various forms, including but not limited to, well completion reports, sundry notices, or available production information. As a prudent lessee, it is your responsibility to analyze and evaluate this information and make the necessary calculations to determine:

(1) The amount of drainage from production of the draining well;

(2) The amount of mineral resources which will be drained from your Federal or Indian lease during the life of the draining well; and

(3) Whether a protective well would be economic to drill.

(b) You must notify BLM within 60 days from the date of actual or constructive notice of:

(1) Which of the actions in § 3162.2-4 you will take; or

(2) The reasons a protective well would be uneconomic.

(c) If you do not have sufficient information to comply with § 3162.2-9(b)(1), indicate when you will provide the information.

(d) You must provide BLM with the analysis under paragraph (a) of this section within 60 days after we request it.

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### **§ 3162.2-10 Will BLM notify me when it determines that drainage is occurring?**

We will send you a demand letter by certified mail, return receipt requested, or personally serve you with notice, if we believe that drainage is occurring. However, your responsibility to take protective action arises when you first knew or had constructive notice of the drainage, even when

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that date precedes the BLM demand letter.

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### **§ 3162.2-11 How soon after I know of the likelihood of drainage must I take protective action?**

(a) You must take protective action within a reasonable time after the earlier of:

(1) The date you knew or had constructive notice that the potentially draining well had begun to produce oil or gas; or

(2) The date we issued a demand letter for protective action.

(b) Since the time required to drill and produce a protective well varies according to the location and conditions of the oil and gas reservoir, BLM will determine this on a case-by-case basis. When we determine whether you took protective action within a reasonable time, we will consider several factors including, but not limited to:

(1) Time required to evaluate the characteristics and performance of the draining well;

(2) Rig availability;

(3) Well depth;

(4) Required environmental analysis;

(5) Special lease stipulations which provide limited time frames in which to drill; and

(6) Weather conditions.

(c) If BLM determines that you did not take protection action timely, you will owe compensatory royalty for the period of the delay under § 3162.2-12.

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### **§ 3162.2-12 If I hold an interest in a lease, for what period will the Department assess compensatory royalty against me?**

The Department will assess compensatory royalty beginning on the first day of the month following the earliest reasonable time we determine you should have taken protective action. You must continue to pay compensatory royalty until:

(a) You drill sufficient economic protective wells and remain in continuous production;

(b) We approve a unitization or communitization agreement that includes the mineral resources being drained;

(c) The draining well stops producing; or

(d) You relinquish your interest in the Federal or Indian lease.

[66 FR 1894, Jan. 10, 2001]

### **§ 3162.2-13 If I acquire an interest in a lease that is being drained, will the Department assess me for compensatory royalty?**

If you acquire an interest in a Federal or Indian lease through an assignment of record title or transfer of operating rights under this part, you are liable for all drainage obligations accruing on and after the date we approve the assignment or transfer.

[66 FR 1894, Jan. 10, 2001]

### **§ 3162.2-14 May I appeal BLM's decision to require drainage protective measures?**

You may appeal any BLM decision requiring you take drainage protective measures. You may request BLM State Director review under 43 CFR 3165.3 and/or appeal to the Interior Board of Land Appeals under 43 CFR part 4 and subpart 1840.

[66 FR 1894, Jan. 10, 2001]

### **§ 3162.2-15 Who has the burden of proof if I appeal BLM's drainage determination?**

BLM has the burden of establishing a *prima facie* case that drainage is occurring and that you knew of such drainage. Then the burden of proof shifts to you to refute the existence of drainage or to prove there was not sufficient information to put you on notice of the need for drainage protection. You also have the burden of proving that drilling and producing from a protective well would not be economically feasible.

[66 FR 1894, Jan. 10, 2001]

### **§ 3162.3 Conduct of operations.**

(a) Whenever a change in operator occurs, the authorized officer shall be notified promptly in writing, and the new operator shall furnish evidence of sufficient bond coverage in accordance with § 3106.6 and subpart 3104 of this title.

(b) A contractor on a leasehold shall be considered the agent of the operator