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8728. Wm. FREE ET AL TO SHELL PETROLEUM CORPORATION. OIL, GAS AND MINERAL LEASE.

file Wm
ED T11887-2
OIL, GAS AND MINERAL LEASE

AGREEMENT, Made and entered into the 13th day of August, 1936, by and between Wm. Free, Lillie Gentile, Lillie Kennedy and husband, J. T. Kennedy, H. McElroy, J. H. McElroy, Louise Oliver and husband, W. H. Oliver, hereinafter called lessor (whether one or more), and Shell Petroleum Corporation hereinafter called lessee:

1. WITNESSETH: That the said lessor, for and in consideration of Ten & no/100 (and other valuable consideration) Dollars cash in hand paid, receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of lessee to be paid, kept and performed, has granted, demised, leased, and let, and by these presents does grant, lease and let unto the said lessee for the purpose and with the exclusive right of exploring, drilling, mining, and operating for, producing, and owning oil, gas, sulphur and all other minerals and of laying pipe lines and of building tanks, telephone lines, power stations, and other structures thereon to produce, save, treat and take care of said products, and housing its employes, all that certain tract of land situated in the County of Polk State of Texas, described as follows, to-wit:

The North ten hundred sixty-one (1061) acres of the P. A. Sublett League, being all of Lot No. 6 awarded to Rebecca Kimbrough in the partition suit of the Henry Roberts estate.

2. For the purpose of determining the amount of any money payment hereunder, said land shall be considered to comprise 1061 acres, even though it actually comprises more or less, but it is lessor's intention to lease, and he does lease hereby in addition to the land above described, all of the land and interests in land owned by lessor in said sections, grants, leagues and surveys as shown by the records of of said County or Parish and all other land and interests in land owned by lessor in said sections, grants, leagues and surveys and adjoining sections, grants, leagues and surveys and lessor expressly agrees to deliver to lessee any supplemental instrument deemed necessary or requested by lessee for more complete or accurate description of said land and interests.

3. It is agreed that this lease shall remain in force for a term of five (5) years from this date, said term being hereinafter called "Primary Term", and as long thereafter as either oil, gas, sulphur or any other mineral is produced from said land by lessee.

4. In consideration of the premises lessee covenants and agrees:

(A) To deliver to the credit of lessor, free of cost, in the pipe line to which lessee may connect its or his wells, the equal one-eighth part of all oil produced and saved by lessee from the leased premises, or from time to time, at the option of lessee, to pay lessor the average of the posted market price of such one-eighth part of such oil as of the day it is run to the pipe line or storagetanks.

(B) To pay lessor, as royalty for gas from each well where gas only is found, while the same is being sold or used off the premises, one-eighth of the market price at the wells of the amount so sold or used, and where such gas is not so sold or used lessee shall pay to lessor \$50.00 per annum as royalty from each of such wells and while such royalty is so paid such royalty is so paid such well shall be held to be a producing well under paragraph "3" hereof. While gas from any well producing gas

only is being used or sold by lessee, lessor may have enough of such gas for all stoves and inside lights in the principal dwelling house on said land by making lessor's own connections with the well at lessor's own risk and expense.

(C) To pay lessor as royalty for gas produced from any oil well and used by lessee for the manufacture of gasoline, one-eighth of the market value of such gas. If such gas is sold by lessee, then lessee agrees to pay lessor as royalty, one-eighth of the net proceeds derived from the sale of said casinghead gas at the wells.

(D) To pay lessor Fifty Cents (50c) per long ton (2240 pounds) of all sulphur produced and marketed from the land hereby leased.

(E) To pay lessor on all other minerals mined and marketed by lessee from the leased premises one-tenth either in kind or value at the well or mine at lessee's election.

5. If operations for drilling a well or excavating a mine be not commenced on said land on or before the 13th day of August, 1937, this lease shall terminate as to both parties, unless lessee on or before that date shall pay or tender by the check or draft of lessee, to lessor, or to lessors, credit in the Silsbee State Bank at Silsbee, Texas, or its successors, or in the First National Bank in Houston at Houston, Texas, or its successors, which shall continue as the depository, regardless of changes in ownership of said land, the sum of Fifty & No/100 (\$50.00) Dollars, which shall operate ~~as rental and cover the~~ privilege of deferring commencement of operations for the drilling of a well or excavating a mine for twelve (12) months, from said date. In like manner and upon like payments or tenders the commencement of such operations may be further deferred for like periods of the same number of months successively. And it is understood and agreed that the consideration first recited herein covers not only the privileges granted to the date when said first rental is payable as aforesaid, but also lessee's option of extending that period as aforesaid, and any and all other rights conferred.

6. If on any rental date there be neither operations in progress for ^{the} drilling of a well or excavating a mine on said land, nor production therefrom, because of voluntary shutdown or for any other reason, this lease shall terminate, unless lessee on or before said date shall make or resume the payment of rentals as herein set forth; provided if such operations be abandoned within a period of ninety (90) days prior to any rental date or if production ceases within such ninety (90) days' period, lessee shall have a period of ninety (90) days after such abandonment of operations or cessation of production within which to commence re-working operations or operations for the drilling of another well or exavating a mine or within which to make said rental payment and the commencement of such operations or the payment of such rental within said ninety (90) days period shall have the same force and effect as though commenced or paid on or before said rental date.

7. If, at the expiration of the primary term of this lease neither oil, gas sulphur nor other minerals is being produced on the leased premises, but lessee is then engaged in drilling for oil or gas or mining for sulphur or other minerals, then this lease shall continue in force so long as drilling or mining operations are being continuously prosecuted on the leased premises; and drilling or mining operations shall be considered to be continuously prosecuted if not more than ninety (90) days shall elapse between the completion or abandonment of one well or mine and the beginning

of operations for the drilling of a subsequent well or excavating of a subsequent mine. If oil, gas, sulphur or other minerals shall be discovered and produced from any such well or wells drilling or being drilled or sulphur be discovered and produced from any mine or mines excavated or being excavated at or after the expiration of the primary term of this lease, this lease shall continue in force so long as oil, gas, sulphur or other minerals shall be produced from the leased premises.

8. It is especially agreed that in event oil, gas, sulphur or other minerals, is being produced or is being produced or is obtained from said premises after the expiration of the primary term hereof, and said production shall for any reason cease or terminate, lessee shall have the right at any time within ninety (90) days from the cessation of such production to resume drilling or mining operations in the effort to make said leased premises again produce oil, gas, sulphur or other minerals, in which event this lease shall remain in force so long as such operations are continuously prosecuted, as defined in the preceding paragraph and if they result in production of oil, gas, sulphur or other minerals, so long thereafter as oil, gas, sulphur or other minerals is produced from the premises.

9. If said lessor owns a less interest in the leased premises than the entire and undivided fee simple estate, or no interest therein, then the royalties, rentals and other moneys herein provided for shall be paid lessor only in the proportion which lessor's interest, if any, bears to the whole and undivided fee.

10. Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for all operations thereon, except from water wells of lessor. When requested by lessor, lessee shall bury its pipe lines below plow depth. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without the consent of the lessor. Lessee shall pay for damages caused by all operations to growing crops on said land. Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

11. It is agreed that the estate of either party hereto may be assigned in whole or in part and as to any mineral. All the covenants, obligations and considerations of the within lease shall extend to and be binding upon the parties hereto, their heirs, executors administrators, successors, assigns and successive assigns. It is expressly agreed, with reference to every change or division whatsoever, and however arising or or affected in the ownership of said land, royalties or rental or other moneys, or any part of the same, that no such change or division shall operate to increase the obligations or diminish the rights of lessee hereunder. If the ownership of the royalties becomes changed into separate divided portions of said land and the owners of such royalty desire separate gauges for production from such separate tracts, they shall furnish and set separate measuring and receiving tanks and connections therefor at their sole cost and expense, and lessee shall not be required to off-set wells on separate tracts or portions of said land, or to furnish upon or as to any such tract or portion separate measuring or receiving tanks. Notwithstanding any other actual or constructive knowledge or notice whatsoever, thereof, of or to lessee, no change or division in the ownership of the lands, royalties, delay rentals, or other moneys shall be binding upon the owner of the lease unless and until after thirty days' written notice thereof from both lessor and lessor's successor or successors in interest, their successors and assigns, in which all such parties in interest concur, and until such transfers or assignments in the event such division or change is accomplished in that manner, have been properly recorded in the County or parish where the land lies, and copies thereof certified by the County Clerk or Recorded, shall have been delivered to the record owner of the lease at the time of recordation of such transfers or assignments, said notice and copies to

be delivered to said record owner at his or its principal place of business. In the event of the death of lessor or his heirs, devisees, successors or assigns, their successors or assigns, no change in the ownership of the land, royalties, delay rentals or other moneys hereunder shall be binding on the record owner of the lease until proof satisfactory to such record owner is furnished, evidencing such change in ownership. In event of assignment of this lease as ^{to} any part (whether divided or undivided) of said land, the rentals payable hereunder shall be apportionable as between the several leasehold owners, ratable according to the surface area or undivided interest of each, and default in rental payment by one shall not affect the rights of other leasehold owners hereunder. If six or more parties becomes entitled to royalty hereunder, lessee may withhold payment thereof unless and until furnished with a recordable instrument executed by all such parties designating an agent to receive payment for all.

12. Lessee shall have the exclusive right to build, operate and maintain pits, reservoirs, pickup stations and plants for the purpose of picking up and conserving the waste oil that flows down the creeks, ravines and across the land embraced in the lease, whether said oil is produced from land covered by this lease or other lands, and lessor shall be entitled to receive the royalty hereinbefore reserved on all such oil so saved.

13. In case of cancellation or termination of this lease for any cause, lessee shall have the right to retain under the terms hereof twenty-five (25) acres of land around each oil or gas well or mine producing, being worked on, or drilling hereunder, as long as such operations are continued in good faith, such tract to be designated by lessee in as near a square form as practicable.

14. In the event lessor considers that lessee has not complied with ^{all} its obligations hereunder, both express and implied, lessor shall notify lessee in writing, setting out specifically in what respects lessee has breached this contract. Lessee shall then have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by lessor. The service of said notice shall be precedent to the bringing of any action by lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after service of such notice on lessee. Neither the service of said notice nor the doing of any acts by lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that lessee has failed to perform all its obligations hereunder.

15. Title to the minerals vested in lessee under this lease shall not end or revert to lessor until there is a complete, absolute and intentional abandonment by lessee of each and all of the purposes, expressed or implied of this lease and every part and parcel of the premises described in this lease. Lessee may, at any time and from time to time, execute and deliver to lessor, or place of record, a release or releases covering any portion or portions of the above described premises, or any mineral thereunder, and thereby surrender this lease as to such portion or portions, or as to such mineral, and be relieved of all obligations and rentals as to the acreage, or minerals, surrendered.

16. Lessor hereby warrants and agrees to defend title to the leased premises and agrees that lessee shall have the right at any time to pay or reduce for lessor, either before or after maturity, any mortgages, taxes or other liens or interest and other charges on said lands and be subrogated to the rights of the holder thereof and to de-

duct amounts so paid from royalties or other payments due or which may become due to lessor and/or assign under this lease.

IN TESTIMONY WHEREOF, we sign as of the day and year first above written.

Wm Free
Lillie Kennedy
J. T. Kennedy
J. H. McElroy
H. McElroy
W. H. Oliver
Louise Oliver
Lillie Gentile

THE STATE OF TEXAS 0
COUNTY OF BRAZORIA 0

BEFORE ME, the undersigned authority, a Notary Public, in and for said County and State, on this day personally appeared Wm. Free, and J. H. McElroy, known to me to be the persons whose names are subscribed to the foregoing instruments, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this the 13th day of August, A. D. 1936.

C. B. Kimmins
Notary Public in and for Brazoria
County, Texas.

(SEAL)

THE STATE OF TEXAS 0
COUNTY OF HARRIS 0

BEFORE ME, Kent Ridley, Jr. a Notary Public in and for said County and State, on this day personally appeared H. McElroy known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 13th day of August, A. D. 1936.

Kent Ridley, Jr.
Notary Public Harris County, Texas.

(SEAL)

STATE OF TEXAS 0
COUNTY OF BRAZORIA 0

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared J. T. Kennedy and Lillie Kennedy, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed. And the said wife, having been examined by me privily and apart from her husband, and having had said instrument fully explained to her, she, the said wife, acknowledged, the same to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office, this 13th day of August A. D. 1936.

C. B. Kimmins
Notary Public in and for Brazoria
County, Texas.

(SEAL)

STATE OF TEXAS 0
COUNTY OF LIBERTY 0

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared W. H. Oliver and Louise Oliver, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

And the said wife, having been examined by me privily and apart from her husband, and having had said instrument fully explained to her, she the said wife, acknowledged the same to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office, this 14 day of August, A. D. 1936.

(SEAL)

W. C. Morgan
Notary Public in and for Liberty
County, Texas.

THE STATE OF TEXAS 0
COUNTY OF GONZALES 0

BEFORE ME, the undersigned, a Notary Public, in and for said County, Texas, on this day personally appeared Lillie Gentile known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14 day of Aug. A. D. 1936.

(SEAL)

P. G. Muenzler
Notary Public.

Filed for record in my office on the 18 day of Aug. 1936 at 8 O'Clock A. M., and was this day duly recorded at 11 O'Clock A. M., in Vol. 17 pages 596, et seq., Oil and Gas Lease Records of said County.

Witness my hand and official seal at office in Livingston, this 24 day of Aug. 1936.

(SEAL)

C. B. Marsh
Clerk County Court, Polk County,
Texas.

BY Merrin Alvord Deputy.

THE STATE OF TEXAS
COUNTY OF POLK

I, ALINE STEPHENSON, COUNTY CLERK IN AND FOR POLK COUNTY,
STATE OF TEXAS, DO HEREBY CERTIFY THAT THE WITHIN AND FOREGOING
IS A TRUE AND CORRECT COPY OF:

Oil, Gas & Mineral Lease

File#8726

From: William Free Et Al

To: Shell Petroleum Corp.

AS THE SAME APPEARS OF RECORD IN MY OFFICE IN Oil & Gase

BOOK NO. 7 PAGE 596.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND
AFFIXED THE IMPRESS OF THE OFFICIAL SEAL OF POLK COUNTY COURT,
AT MY OFFICE IN THE CITY OF LIVINGSTON, COUNTY OF POLK, STATE
OF TEXAS, ON THIS THE 10th DAY OF October A.D. 1983.

ALINE STEPHENSON
COUNTY CLERK POLK COUNTY, TEXAS

BY

Shirley Cain

Shirley Cain

DEPUTY