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earned or returned in accordance with a determination of the sums due as Federal royalties on the basis of such approved participating area.

Whenever it is determined, subject to the approval of the Supervisor, that a well drilled under this agreement is not capable of production in paying quantities and inclusion of the land on which it is situated in a participating area is unwarranted, all production from such well shall be allocated to the particular lease which includes the land on which the well is located so long as that well is not within a participating area established for the pool or deposit from which such production is obtained.

ALLOCATION OF PRODUCTION

11. All unitized substances produced from each participating area established under this agreement, except any part thereof used for production or development purposes within such Participating Area, or unavoidably lost, shall be deemed to be produced equally on an acreage basis from the several tracts of unitized land of the participating area established for such production and, for the purpose of determining any benefits that accrue on an acreage basis, each such tract shall have allocated to it such percentage of said production as its area bears to the said participating area. It is hereby agreed that production of unitized substances from a participating area shall be allocated as provided herein regardless of whether any wells are drilled on any particular part or tract of said participating area.

DEVELOPMENT OR OPERATION ON NON-PARTICIPATING LAND

12. Any party hereto, other than the Unit Operator, owning or controlling a majority of the working interests in any unitized land not included in a participating area and having thereon a regular well location in accordance with a well-spacing pattern established under an approved plan of development and operation may drill a well at such location at his own expense, unless within 90 days of receipt of notice from said party of his intention to drill the well the Unit Operator elects and commences to drill such well in like manner as other wells are drilled by the Unit Operator under this agreement.