

Caveats

- ⊗ Remember, *this is a NATIONAL TEMPLATE*
- ⊗ One size does *not* fit all; changes always have been contemplated and encouraged.
- ⊗ All changes were made on consensus; also adopted “if it’s not broken, don’t fix it” philosophy.
- ⊗ For every one change made, we received ten or more that were rejected as too regionally specific or issues the task force felt were better left for negotiations between the parties. **SEATTLE**

Article III

INTERESTS OF PARTIES

- ⊗ How and when can an Operator change or correct the interests of the parties on Exhibit “A?”
- ⊗ Can we improve the options available in the shared obligation clause (Allocation of Lease Burdens) in III.B?

ARTICLE III.B

INTEREST OF PARTIES IN COSTS AND PRODUCTION

- ⊗ Operator may amend Exhibit “A” to correct mistakes or reflect changes of ownership:
 - ⊗ Corrections of initial mistakes are retroactive to Effective Date.
 - ⊗ Changes occurring after the Effective Date are made effective, retroactively, to effective date of change.
- HOWEVER!**
- ⊗ Amendments to interests of a party or parties require written consent of the affected party or parties.

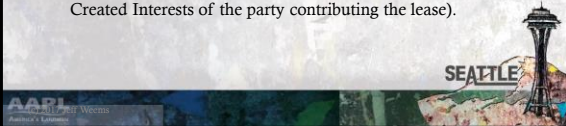
ARTICLE III.B
INTEREST OF PARTIES IN COSTS
AND PRODUCTION
(continued)

- ✧ Copies of the amended Exhibit "A" and, when a title opinion supporting the amendment is required, the title opinion shall be furnished to the affected party or parties.
- ✧ An affected party who has not consented to an amendment may pursue litigation to seek resolution as to the validity of the amendment



ARTICLE III.B
INTEREST OF PARTIES IN COSTS AND
PRODUCTION
(continued)

- ✧ Article III.B has historically provided that all parties will pay a stipulated share of all royalties; each party contributing an individual lease must pay any amount of royalty owed on that lease in excess of the amount stipulated.
- ✧ Added a second option: each party will pay their Exhibit "A" share of all leasehold burdens (except the Subsequently Created Interests of the party contributing the lease).



ARTICLE IV.B.1
FAILURE OF TITLE

- ✧ A Failure of Title occurs when a lease is determined to be invalid as of the Effective Date.
- ✧ Failure of Title includes:
 - ✧ Lease covers a lesser interest than that originally credited to a party.
 - ✧ Lease covers less lands than described in a lease:
 - ✧ Aerial basis
 - ✧ Zones



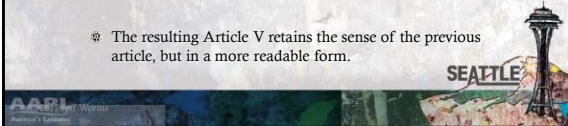
ARTICLE IV.B.3 OTHER LOSSES

- ✧ Other Losses are joint losses and now include the loss of any lease or interest, or portion thereof, of lands or depths, due to failure to develop, or due to an express term in a lease.
- ✧ Covers:
 1. Losses due to Pugh Clauses
 2. Losses due to term lease or depth restrictions



Article V Operator

- ✧ This entire article was substantially rewritten, not just to make substantive improvements, but also to make it more readable and understandable.
- ✧ The existing Article V appeared to be cut-and-pasted together and, while it could be parsed correctly, doing so was unnecessarily difficult.
- ✧ The resulting Article V retains the sense of the previous article, but in a more readable form.



Article V.A Operator-Substantive Addition

- ✧ States something which was apparently often misunderstood in industry:
- ✧ "Operatorship is neither assignable nor forfeited except in accordance with the provisions of this Article V."



Article V Operator-Substantive Addition

- ✧ New Definition: "Affiliate" (Article I.B):
 - ✧ "Affiliate" shall mean for a person, another person that controls, is controlled by, or is under common control with that person. For purposes of this definition, "control" means the ownership by one person, directly or indirectly, of more than fifty percent (50%) of the voting securities of a corporation or, for other persons, the equivalent ownership interest (such as a partnership interest), and "person" means an individual, corporation, partnership, trust, estate, unincorporated organization, association, or legal entity.
 - ✧ Matches COPAS definition of "Affiliate."

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Article V.A Operator-Substantive Addition

- ✧ Allows the Operator to act as agent for Non-operators to make routine filings and recordings for pooling declarations and communitization agreements, after giving notice to non-operators.
- ✧ Non-operators are then bound unless they object within 10 days after receipt of such notice.

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Article V.A Operator-Substantive Addition

- ✧ Reworked the sentence dealing with the operator's standard or conduct/exculpatory clause. Close to a reversion back to the 1982 standard for the exculpatory provision, which now applies only "in connection with authorized or approved operations under this agreement."

Intent is to focus the exculpatory language just on operations, reversing the effect of the decision in *Reeder v. Wood County Energy, LLC*, 397 S.W.3d 789 (Tex. 2013)!

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Article V.A Substantive Addition

- ✳ **Allows non-owning Operators**, subject to conditions:
 - ✳ Requires a separate agreement specifying authority, duties, limitations, compensation etc. *as condition precedent* to authorizing non-owning operator.
 - ✳ Binds non-owning operator to those provisions of the JOA applicable to Operator unless the separate agreement otherwise provides.
 - ✳ The Task Force recognized that non-owning Operators commonly exist. Some are affiliates of interest owners while others are simply Contract Operators, in spite of the fact they are not permitted by prior JOA forms.

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Article V.B Resignation or Removal of Operator and Selection of Successor

- ✳ Subsections are reordered to achieve more logical sequence.
- ✳ V.B.2 permits the parties to agree that a specified minimum interest, as opposed to simply "an interest," must be owned by the Operator, or it will be deemed to have resigned.

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Article V.B Resignation or Removal of Operator and Selection of Successor:

- ✳ V.B.4 Defines "good cause" for removal of owner/operator
 - ✳ Cause includes "(i) gross negligence or willful misconduct; (ii) the material breach of or inability to meet the standards of operation contained in Article V.A., or (iii) material failure or inability to perform its obligations or duties under this agreement."

[This clarifies the confusion with the prior wording.]

- ✳ Accused Operator is entitled to 30-days notice and opportunity to cure (48 hours if cause involves an operation then being conducted)

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Article V.B Resignation or Removal of Operator and Selection of Successor:

- ⊗ V.B.5 deals with removal of non-owning Operator:
- ⊗ Removable by majority interest, with or without cause (unless this is altered by the separate agreement).
- ⊗ If cause exists, any Affiliate of non-owning operator is barred from voting.

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Article V.D.5 Access to Contract Area and Records

- ⊗ V.D.5(a) Permits general access to Consenting Parties.
- ⊗ V.D.5(b) Non-consenting party only becomes entitled to access to that part of the contract area/records dealing specifically with the non-consented operation on the earlier of Article VI.B recoupment or 2 years following commencement of the non-consented operation.
- ⊗ V.D.5(c) Non-consenting party's right to audit is limited to that necessary to determine the status of payout.

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B. Subsequent Operations

- ⊗ 1. Proposed Operations
- ⊗ If any party hereto should desire to drill any well ~~on the~~ **Contract Area under this agreement**
- ⊗ The idea here is to accommodate proposals which may include pooled units, production sharing agreements or allocation wells.
- ⊗ shall give a written ~~notice~~ **proposal** of the operation
- ⊗ "proposal" becomes a key term and includes certain information necessary for all parties to make an informed financial decision whether or not to participate.

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B. Subsequent Operations

- ✧ 1. Proposed Operations – Vertical Well Proposal duplicates the information required for Horizontal wells
 - ✧ The well is a vertical well
 - ✧ Drilling and Completion plans
 - ✧ Depth
 - ✧ Surface and bottom hole locations (if deviated)
 - ✧ Objective Zone
 - ✧ Rig utilization
 - ✧ Stimulation operations – sizing, stages
 - ✧ Estimated drilling & Completion costs
 - ✧ As set forth in an AFE

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B. Subsequent Operations

- ✧ 1. Proposed Operations –Horizontal Well Proposal no change from the 1989 Horizontal form.
 - ✧ **For both Vertical and Horizontal Wells, an AFE is now a (i) defined term, and (ii) a required feature of a valid proposal.**
 - ✧ **This is a major change from the 1989 and prior forms.**
 - ✧ **Change in next to last line from “Drilling Parties” to “Consenting Parties”.**
 - ✧ This is a better use of terminology and more consistent with other parts of the JOA.

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B. Subsequent Operations

- ✧ 2. Operations by Less Than All Parties
 - ✧ a. At end of first paragraph, conformed ~~on the Contract Area~~ to concept of “under this Agreement”.

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B. Subsequent Operations

- ✧ 2. Operations by Less Than All Parties
 - ✧ b. Non-Participation:
 - ✧ Conformed some numbering references.
 - ✧ Cleaned up and conformed references to the "proposed operation".
 - ✧ d. Recoupment Matters
 - ✧ 3. Stand-By Costs: Added "Extension" as a joint account cost during the response time for certain proposed additional operations
 - ✧ 4. Limited "Deepening," but acknowledged that the parties can deepen a horizontal well.

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B. Subsequent Operations

- ✧ 2. d. Recoupment Matters
 - ✧ 5. Eliminated the provision that makes Sidetracking a term applicable only to Vertical Wells.
 - ✧ "Sidetracking" as defined in this Model Form is an appropriate operation with respect to Horizontal wells.
 - ✧ 6. Added a provision for Extension of the Lateral in horizontal wells.
 - ✧ "Extension" is a new defined term relating to Hz wells.
 - ✧ The new provision allows the parties to control the financial and mechanical risk of drilling a longer lateral by requiring written notice and consent if the extension exceeds a given percentage of the original proposal.
 - ✧ Drag along feature if the % approval threshold reached.

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B. Subsequent Operations

- ✧ 2. d. Recoupment Matters
 - ✧ 8. Conformity to Spacing Pattern. ... no wells shall be proposed to be drilled to or Completed in or produced from a Zone which a well located elsewhere on the Contract Area is producing unless such well conforms to the then-existing well spacing pattern for such Zone, including such well having been approved as an exception to the existing well pattern for such Zone by the regulatory agency having jurisdiction thereof.
 - ✧ Language added for clarification.

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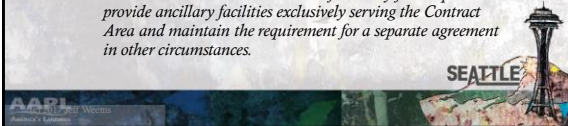
C. Completion, Reworking & Plugging Back

- ⊗ No changes to this article from the 1989 Horizontal form.
- ⊗ NOTE: Casing point election no longer applies to horizontal wells unless last stand-alone sentence of C.1 is deleted. The parties will need to clearly understand and define when that election is to be made.



D. Other Operations

- ⊗ Eliminated the reference to specific items (repair, ancillary production facilities, SWD, etc.), added a reference to "Workover" operations, and struck the exclusion for gathering facilities.
- ⊗ Added requirement that facilities not exclusive to the Contract Area must be the subject of a separate agreement.
- ⊗ *These revisions create a little more flexibility for the parties to provide ancillary facilities exclusively serving the Contract Area and maintain the requirement for a separate agreement in other circumstances.*



E. Deviation from Approved Proposals

- ⊗ New Provision. Added to clarify that the Operator will not have liability for deviations based on new information or facts & circumstances occurring after commencement of operation.
- ⊗ Operator must act reasonably. Intended to create an objective standard that protects the Operator and also protects the Non-operator.



F. Abandonment of Wells

- ✧ 1. Abandonment of Dry Holes
 - ✧ Added "Sidetracked" and clarified that only the parties owning an interest in the well at the time of the proposal need to consent.
 - ✧ Added an allowance for an abandonment proposal after the drilling rig has been released. This recognizes the operations fact that many horizontal wells are not completed immediately following drilling, and/or that the actual drilling rig may have been released prior to completion operations commencing.

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F. Abandonment of Wells

- ✧ 2. Abandonment of Well That Has Produced.
 - ✧ Revised to allow anyone to propose the abandonment of wells that, although producing, are no longer economic.
 - ✧ Added that if a party elects to take over a well proposed for P&A, the assignment from the relinquishing parties must be free of Subsequently Created Interests.

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G. Termination of Operations H. Taking Production in Kind

- ✧ G. Added new defined term "Extension" to the list of operations subject to termination.
- ✧ H. Clean up and clarification only. No substantive revision from the 1989 Horizontal Model Form

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Article VII

Generally Minor Changes

1. VII.B. – Expanded situations when a party can collect from the first purchaser its share of proceeds by expanding instances of default to include “other financial obligations” and also changed “Operator” to “a party.”
2. VII.C. – Lengthened time allowed to make advance payments from 15 to 30 days.

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VII.D.3. - Usury Protection

Added a paragraph at the end of VII.D.3. to state that, to the extent any VI.B. or VI.C. risk penalty is determined to constitute interest on a debt, then the “interest” amount of such penalty shall not exceed the maximum amount of non-usurious interest allowed by law.

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VIII.A. – Surrender of Leases

1. The scope of the assignment of interest (to parties not agreeing to surrender) is modified to include only material and equipment being used exclusively on the lease being surrendered.
2. The term of the lease given to non-consenters is expanded to include “so long as” production occurs from pooled lands also.

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VIII.D. – Big Change

In large part, these changes were prompted by the Texas Supreme Court's ruling in *Seagull v. Eland*.

1. Assignments are effective 30 days after the Operator receives the documentation.
2. After this 30-day period, the transferor is relieved of liability for costs and expenses of operations occurring after the 30-day period –

EXCEPT

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VIII.D. - continued

The transferor will remain liable (potentially) for costs and expenses related to **approved** operations for which the transferor had agreed to participate before assigning the interest.

Key point: The transferor and transferee shall be jointly and severally liable for costs and expenses related to the operations noted above.

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Article X - Lawsuits

The new default situation states that the Operator shall assume and handle the defense of any claim or suit on behalf of everyone – unless a party has affirmatively stated, within 14 days of receiving notice, that it will handle its own defense.

Note: Even if a party chooses to represent itself, it will remain liable (also) for its share of the legal expenses JIB'd to the participating parties!

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Article XII - Notices

Email Notice is now allowed!

References to telegram, telex and telecopier were deleted (facsimile remains an alternative).

The notice must be sent as an attachment to an email. **The email notice must state it is a notice under the JOA and is deemed delivered only when affirmatively acknowledged by return email, not by automatic delivery receipts!**

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Article XIV

Fixed the language regarding release of Operator for liability for losses relating to rules interpretation:

1. to keep the Operator responsible for its percentage share;
2. to include **any** agency with jurisdiction; and
3. to exclude willful misconduct.

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Article XV

Minor Changes Only

1. In the case of discontinuation because of lack of participation, the Operator may deduct proportionate shares of preparation costs from prepayment refunds.
2. Moved Article XVI.A., Conflict of Terms, to XVE.

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