2014 Edition

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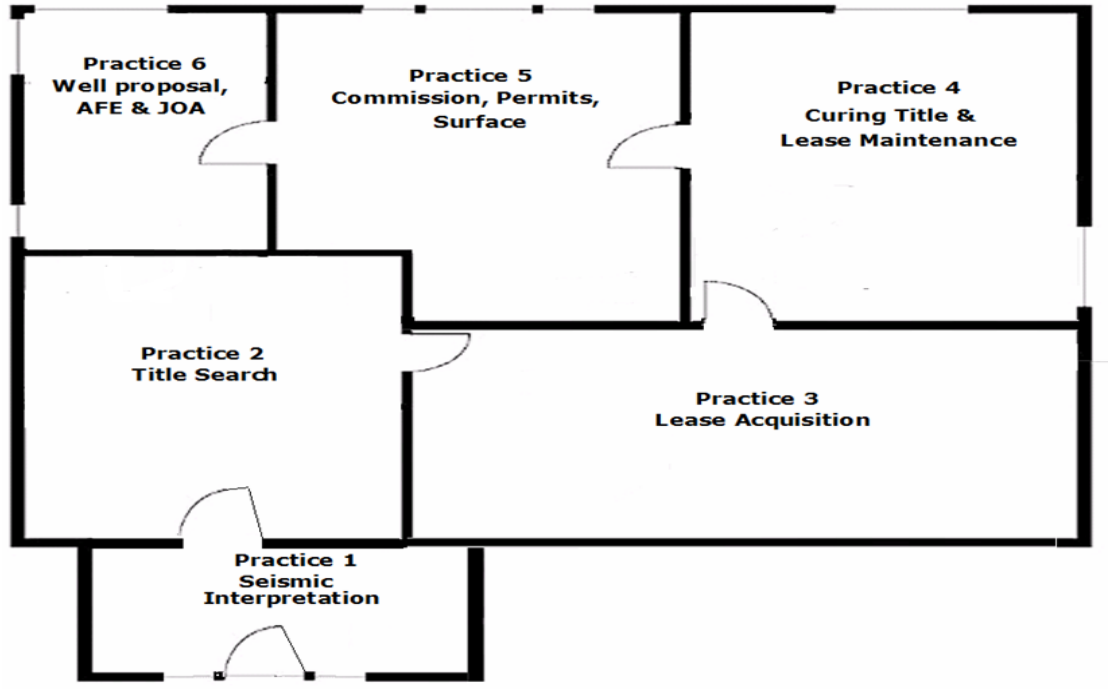
This publication is designed to help identify the prevailing guidelines that surround the disposition of the subject matter covered. It is; however, not intended to substitute for any specific legal advice or opinion. Since state rulings in the matter of law are defined by the courts and can change at any time, no portion of this publication is a substitute for legal advice. Since state statutes are voluminous and vary from state to state, this course does not purport to be a complete or definitive volume on the subject. In many cases, topics covered have been summarized in order to relate to the layman. As with all condensed statements, they are incomplete in their substance. Where these statements are expressed, they are designed only as a guideline and not as a legal opinion on any one specific matter. The publisher and/or authors are not engaged in rendering any legal, accounting or other professional service and do not purport to offer any legal opinion on any one specific matter. If legal advice or other expert assistance is required, the service of a competent professional person should be sought.

Class Objective

The land management professional plays an essential role in the success of oil and gas development. The tasks he or she is called upon to accomplish are often varied but each is vital.

Picture all of the functions in *Land Management* as being a house. The house contains several rooms. In the analogy, each room represents a specific land practice.

The objective of this class is to take the land management professional on a journey through each of the rooms in the house. This trip will enable each participant to engage in the land practices conducted in each of the rooms and will provide an opportunity for hands-on experience through varied activities and projects.



Assume the date is April 24, 2011 and your company has located its primary drilling location in the Crimson Ranch Prospect (Township 3 North, Range 5 West of the 2nd P.M., Section 10, 11, 12, 13, 14 and 15). You wish to drill to the Wolfcamp formation between 8,000 to 9,000 feet. You are closer than ever to begin drilling operations. Seismic has been evaluated, unleased mineral owners have signed oil and gas leases, title curative has been done and it is now time to enter the fifth of our six rooms. Above the door to this room is a sign that reads, "The Commission, Permitting and Surface Negotiations". Before a company can begin any drilling operations, permissions must be received from the state authority and in most states the surface owners must be contacted.

First, since the Crimson Ranch Prospect is in New Mexico, oil companies must work with and deal with the New Mexico Oil Conservation Division. It is this entity that will grant permission for wells to be drilled and establish the rules surrounding operations. Prior to operations and during operations, forms must be filled out and submitted for approval. During this phase of the project, participants must prepare the following forms:

- □ "Application to Drill & Well Permit" C-101
- □ "Plot Plan" C-102
- □ "Sundry Notice" C-103

In order to accurately fill out C-102, participants must determine the well spacing for gas wells in Eddy County, New Mexico that are to be drilled in the Wolfcamp formation. This information can be found at the commission's website. Participants must also assume that at least one mineral owner has refused to sign an oil and gas lease. When this happens, the commission

requires that Compulsory Pooling rules apply. Participants must also determine those rules and fill out the Compulsory Pooling Application.

Secondly, during this phase, participants must negotiate and prepare surface agreements with surface owners. Surface issues surrounding the Crimson Ranch Prospect are discussed following the section containing the Commission forms. Surface Agreements are also provided. Participants must choose the appropriate form to use when negotiating a surface agreement.

The Need for Regulations

Everyone has seen old black and white photos of early oil and gas development in the United States. In developing a field, the philosophy was to drill as many wells as close to one another as could be drilled. Although this philosophy made sense in the early history of the industry, it also created several critical problems and it became clear that the industry needed regulations in place to correct those problems. Consequently, states began implementing statutes and creating regulatory agencies that would oversee the exploration and development of oil and gas. Today, the photos of a developed field look much different.

Today, state regulatory commissions are in place to oversee the drilling activities of oil companies. In many states, stringent rules must be followed and mandate

1. That one well can drain only a certain amount of acres
2. That each well must be a certain distance from another well
3. That each well must be a certain distance from a lease line
4. That each well must be a certain distance from section lines or survey lines
5. That wells will often be limited in the amount of product they can produce each day

Defining a “Pool”

Most regulatory agencies define a “pool” as an interconnected subsurface reservoir of oil, natural gas or both. Even though two reservoirs are found in a common geologic structure, if the two are isolated from one another because of impermeable rock, they would be considered two separate reservoir pools. Separately, each pool contains its own separate pressure.

Defining “Pooling”

Most regulatory agencies would define “pooling” as the combining of leases together in order to develop a field from a common reservoir. Often smaller

tracts of land are not large enough to drill their own well. Pooling creates a method whereby a tract of land can be combined with other tracts of land so that spacing regulations can be met. It is through the pooling regulations that the owners of these smaller tracts of land can, in an equitable way, share in the proceeds from the reservoir. Today, because of the smaller size of most tracts of land, they become a part of a pool of leases and are pooled together for the development of a common source of supply.

Pooling, of this nature, will accomplish the following:

1. Pooling will prevent the loss of pressure in the reservoir
2. Pooling will prevent waste and loss by capturing more of the product
3. Pooling will distribute production to all mineral owners in the pooled area

The establishment of many of these regulations revolve around the words *"spacing and units."*

Spacing: Spacing refers to distances. One well can drain only a certain amount of acres within a certain distance from another well. The well must be a certain distance from a lease line and a certain distance from section lines or survey lines.

Units: Creating *units* was another method used by governmental agencies to distribute production in an equitable manner. A unit can be defined as a distinct area of surface and subsurface which is established for the purpose of drilling and producing oil and gas. Often a unit size (number of acres) is already established by the applicable state governmental agency. The size and shape of a unit can be dependent upon the type of production (either oil or gas), the distance from existing production (whether drilling is considered wildcat or developmental drilling), the geographical location of drilling, and the geological formation or horizon being developed. Generally, units are rectangular or square in shape.

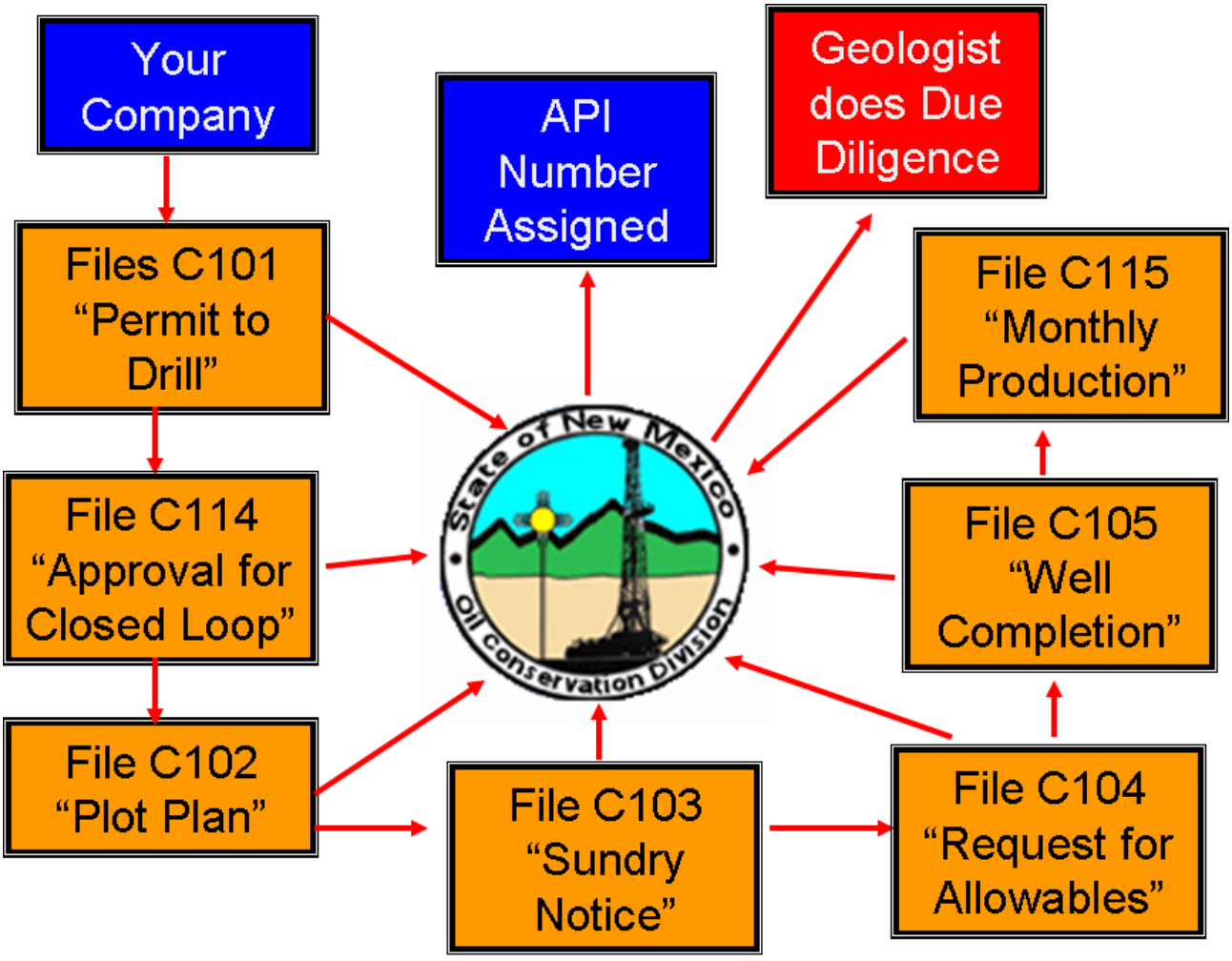
Rules for establishing a Pooling area

Before the pooling of more than one lease or tract of land can take place, several dynamics must be in place.

1. The purpose of the drilling must be to reach a common source of supply.
2. The tract of land where the drilling is to take place must be held by an oil and gas lease. Plus, most of the other lands in the pooled area must be held by oil and gas leases.
3. The oil and gas leases must contain pooling language provisions.
4. A drilling bond must be approved and given to the regulatory agency.
5. A drilling permit must be approved and given to the regulatory agency.

The work can't begin until the paperwork is done.

New Mexico, like many states, requires a significant number of forms, applications and notices to be filed and posted. Below is a diagram of a few of those forms.



Before a company can begin any type of drilling operations, approval must be received for the appropriate state regulatory agency. In New Mexico, the process begins by filing C-101 which is the "Application for a Permit to Drill." Once the New Mexico Oil Conservation Division (OCD) receives this form, they send one of their geologists to the location in order to do due diligence. Once a complete evaluation is determined by the OCD, they issue an API number for the well.

Next, the oil company submits form C-114. This is the "Closed-Loop System Permit" or "Closure Plan Application." In New Mexico, closed containment

systems (sometimes called “closed mud” or “pitless” systems) such as steel tanks are used to store many oil and gas wastes during drilling operations. These wastes are first gathered in steel tanks and then transported to off-site locations for disposal. Operations that use a closed-loop system can reduce or eliminate the discharge of toxic drilling wastes on the site.

Next, C-102, the “Plat Plan” or “Well Location and Acreage Dedication Plat” must be filed. Both the operator and a certified professional surveyor must sign off on this application. The form provides for and establishes the exact location for the surface and bottom-hole location. Often, maps or other pertinent items are attached to C-102.

The form also establishes that “No allowable will be assigned to this completion until all interests have been consolidated or a non-standard unit has been approved by the division.” If any unleased mineral owner or non-consenting working interest owner exists within the proposed boundary, the applicant must begin making provision for Compulsory Pooling.

Next, C-103, the “Sundry Notices and Reports on Wells” must be filed. This form will be used and submitted for each step of the operation. One will be submitted once the well is spud, another when the well is perforated and another when the well is fracked. With each step of the operation, the OCD must be notified with this report.

Next, C-104, the “Request for Allowables and Authorization to Transport” is filed with the commission. This filing takes place once the well has been completed and product is available to be moved.

Next, C-115 the “Operator’s Monthly Report” will be submitted to the OCD. As indicated, this form must be submitted on a monthly basis and will report the production of the number of barrels of oil or condensate and the volume of natural gas produced.

Depending on the operation, several additional reports and applications must be submitted to the OCD.

New Mexico Oil and Gas Rules regarding Well Spacing and Location

19.15.15.10 GAS WELL ACREAGE AND WELL LOCATION

REQUIREMENTS: A wildcat well that the operator projects to drill as a gas well to a formation and in an area that in the division's opinion may reasonably be presumed to produce gas rather than oil and each development well for a defined gas pool, unless otherwise provided in special pool orders, shall be spaced and located as follows.

A. 640-acre spacing applies to a *deep gas well in Rio Arriba, San Juan, Sandoval or McKinley county that is projected to be drilled to a gas producing formation older than the Dakota formation or is a development well within a gas pool created and defined by the division after June 1, 1997 in a formation older than the Dakota formation, which formation or pool is located within the surface outcrop of the pictured cliffs formation (*i.e.*, the San Juan basin). The well shall be located on a spacing unit consisting of 640 contiguous surface acres, more or less, substantially in the form of a square that is a section and legal subdivision of the United States public land surveys and shall be located no closer than:

(1) 1200 feet to an outer boundary of the spacing unit;

(2) 130 feet to a quarter section line; and

(3) 10 feet to a quarter-quarter section line or subdivision inner boundary.

B. 320-acre spacing applies to a *deep gas well in Lea, Chaves, Eddy or Roosevelt county that is projected to be drilled to a gas producing formation, or is within a defined gas pool, that is in the Wolfcamp or an older formation. The well shall be located on a spacing unit consisting of 320 surface contiguous acres, more or less, comprising any two contiguous quarter sections of a single section that is a legal subdivision of the United States public land surveys provided that:

(1) the initial well on a 320-acre unit is located no closer than 660 feet to the outer boundary of the quarter section on which the well is located and no closer than 10 feet to a quarter-quarter section line or subdivision inner boundary; and

(2) only one infill well on a 320-acre unit shall be allowed provided that the well is located in the quarter section of the 320-acre unit not containing the initial well and is no closer than 660 feet to the outer boundary of the quarter section and no closer than 10 feet to a quarterquarter section line or subdivision inner boundary.

C. 160-acre spacing applies to a gas well not covered above. The well shall be located in a spacing unit consisting of 160 surface contiguous acres, more or

less, substantially in the form of a square that is a quarter section and a legal subdivision of the United States public land surveys and shall be located no closer than 660 feet to an outer boundary of the unit and no closer than 10 feet to a quarter-quarter section or subdivision inner boundary.

[19.15.15.10 NMAC - Rp, 19.15.3.104 NMAC, 12/1/08]

* A "deep" gas well is defined as any well that produces from a depth below 15,000 feet.

New Mexico Oil and Gas Rules regarding Compulsory Pooling

TITLE 19 NATURAL RESOURCES AND WILDLIFE

CHAPTER 15 OIL AND GAS

PART 13 COMPULSORY POOLING

19.15.13.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section. [19.15.13.5 NMAC - N, 12/1/08]

19.15.13.6 OBJECTIVE: To establish requirements for implementation of the division's statutory authority to pool interests in oil and gas spacing units. [19.15.13.6 NMAC - N, 12/1/08]

19.15.13.7 DEFINITIONS:

A. "Infill well" means a well in a compulsory pooled proration or spacing unit to be completed in a pool in which an existing well drilled pursuant to the compulsory pooling order has been completed and not plugged and abandoned.

B. "Operator", for the purposes of 19.15.13 NMAC, means the division or commission appointed operator of a compulsory pooled proration or spacing unit, or its successor.

C. "Pooled working interest" means a working interest or unleased mineral interest that is pooled by division or commission order and not by voluntary agreement of the owner of the interest, except for an unleased mineral interest on federal, state or tribal lands. [19.15.13.7 NMAC - N, 12/1/08]

19.15.13.8 CHARGE FOR RISK:

A. General rule. Compulsory pooling orders the division enters pursuant to NMSA 1978, Section 70-2-17, as amended, may provide for the recovery, out of the share of production allocable to the working interest of a party that elects not to pay its proportionate share of well costs in advance, in addition to reasonable well costs and costs of supervision and management, of a charge for risk associated with the drilling, completion or working over and re-

completion of each unit well for which the order provides. Unless otherwise ordered pursuant to Subsection D of 19.15.13.8 NMAC, the charge for risk is 200 percent of well costs.

B. Well costs shall include the reasonable costs of drilling, reworking, diverting, deepening, plugging back and testing the well; completing the well in a formation pooled by the order; and equipping the well for production.

C. An applicant for compulsory pooling is not required to present technical evidence justifying the risk charge provided in Subsection A of 19.15.13.8 NMAC.

D. Exceptions. A person responding to a compulsory pooling application who seeks a different risk charge than that provided in Subsection A of 19.15.13.8 NMAC shall so state in a timely pre-hearing statement filed with the division and served on the applicant in accordance with 19.15.4.13 NMAC, and shall have the burden to prove the justification for the risk charge sought by relevant geologic or technical evidence. The hearing examiner may allow a responding party who has not filed a pre-hearing statement, but who appears in person or by attorney at the hearing, to offer evidence in support of a different risk charge than that Subsection A of 19.15.13.8 NMAC provides, but in such cases the hearing examiner shall allow a continuance of the hearing, if requested, to enable the applicant to present rebuttal evidence. [19.15.13.8 NMAC - Rp, 19.15.1.35 NMAC, 12/1/08]

State of New Mexico
Energy Minerals and Natural Resources

Form C-101

APPLICATION FOR PERMIT TO DRILL, RE-ENTER, DEEPEN, PLUGBACK, OR ADD A ZONE

Operator Name and Address	API Number
	N/A

Property Code	Property Name	Well NO
N/A		

Proposed Pool No 1	Proposed Pool #2
Wolfcamp	**N/A**

Surface Location

UL or Lot #	Section	Twp	Rge	Lot Idn	Ft from the	N/S Line	Feet from the	E/W Line	County

Proposed Bottom Hole Location if Different from Surface

UL or Lot #	Section	Twp	Rge	Lot Idn	Ft from the	N/S Line	Feet from the	E/W Line	County

Additional Well Information

Work Type Code	Well Type Code	Cable/Rotary	Lease Type Code
Multiple **N/A**	Proposed Depth	Formation	Spud Date

Describe the proposed program. Describe the blowout prevention program, if any. Use additional sheets if necessary.

I hereby certify that the information given above is true and complete to the best of my knowledge and belief.	OIL CONSERVATION DIVISION
Printed Name:	Approved by:
Title	Title:
Date: / Phone:	Conditions of Approval Attached:

C-101 Instructions

API number. If this is a new well, the OCD will assign the API number.

Property Code. If this is a new property code the OCD will assign the number.

Property Name. Well name

Pool Number. The proposed pool to which this well is being drilled.

Work Type Code from the following table:

N	New Well
E	Re-entry
D	Drill Deeper
P	Plugback
A	Add a zone

Well Type Code from the following table:

O	Single oil completion
G	Single gas completion
M	Micellaneous
I	Injection Well
S	SWI well
W	Water Supply Well
C	Carbon dioxide well

Cable or rotary drilling code

C	Propose to cable tool drill
R	Propose to rotary drill

Lease Type code

S	State
P	Private

Intend to multiple complete? Yes or No.

Name of the intended drilling company if known.

Anticipated spud date.

UL or Lot # = quarter section

State of New Mexico
Energy Minerals and Natural Resources

Form C-102

WELL LOCATION AND ACREAGE DEDICATION PLAT

API Number	Pool Code	Pool Name
N/A	**N/A**	**Wolfcamp**

Property Code	Property Name	Well Number
N/A		

Dedicated Acres	Operator name	Elevation
		N/A

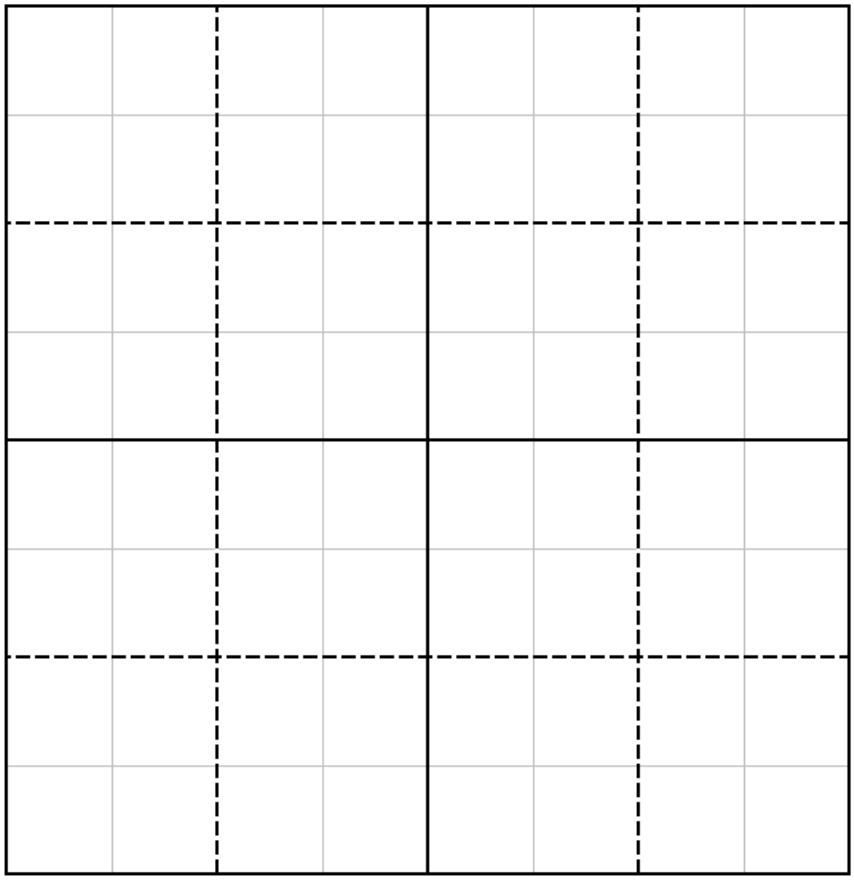
Surface Location

UL or Lot #	Section	Twp	Rge	Lot Idn	Ft from the	N/S Line	Feet from the	E/W Line	County

Bottom Hole Location if Different from Surface

UL or Lot #	Section	Twp	Rge	Lot Idn	Ft from the	N/S Line	Feet from the	E/W Line	County

No allowable will be assigned to this completion until all interests have been consolidated or a non-standard unit has been approved by the division



OPERATOR CERTIFICATION

I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief, and that this organization either owns a working interest or unleased mineral interest in the land including the proposed bottom hole location or has a right to drill this well at this location pursuant to a contract with an owner of such a mineral or working interest, or to a voluntary pooling agreement or a compulsory pooling order heretofore entered by the division.

Signature **date**

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.

Date of Survey
Signature and seal of Surveyor:

This grid represents a standard section. Outline the dedicated acreage and the separate leases within the dedicated acreage. Show the well surface location and the bottom hole location with the dimensions from the section lines in the cardinal directions. If more than one lease has been dedicated to this completion, outline each one and identify the ownership as to both working interest and royalty.

State of New Mexico
Energy Minerals and Natural Resources

Form C-103

SUNDRY NOTICES AND REPORTS ON WELLS

(DO NOT USE THIS FORM FOR PROPOSALS TO DRILL OR TO DEEPEN OR PLUG BACK TO A DIFFERENT RESERVOIR)	API Number **N/A**
Type of Well: Oil Well ☐ Gas Well ☐ Other ☐	Lease Name or Unit Name
Name of Operator	Well Number **N/A**
Address of Operator	Pool Name

Well Name _____

Well Location _____ feet from the _____ line and _____ feet from the _____ line

Section _____ Township _____ Range _____ County _____

Check Appropriate Box to Indicate Nature of Notice, Report or Other Data

NOTICE OF INTENTION TO:				SUBSEQUENT REPORT OF:			
PERFORM REMEDIAL WORK	☐	PLUG AND ABANDON	☐	REMEDIAL WORK	☐	ALTERING CASING	☐
TEMPORARILY ABANDON	☐	CHANGE PLANS	☐	COMMENCE DRILLING OPNS	☐	P & A	☐
PULL OR ALTER CASING	☐	MULTIPLE COMPL		CASING/CEMENT JOB	☐		
DOWNHOLE COMMINGLE	☐						
OTHER	☐			OTHER	☐		

Describe proposed or completed operation. (Clearly state all pertinent details, and give pertinent dates, including estimated date of starting any proposed work.)

-

Compulsory Pooling Application

Date: _____

New Mexico Oil Conservation Division

Application:

_____, Operator for the _____ well located in Eddy County, New Mexico, requests the New Mexico Oil Conservation Division enter an order pooling all unleased and non-consenting interests for the drilling of the _____ well in a unit described as:

Section _____, Township _____, Range _____, County of Eddy, State of New Mexico

Commissioners:

_____, Operator of the _____, well hereby applies to the New Mexico Oil Conservation Division for the Compulsory Pooling of uncommitted leasehold interests in its proposed drilling unit which is described above.

1. Applicant is duly authorized to conduct business in the State of New Mexico.

2. Applicant owns interests in the following described lands which are located in Eddy County, New Mexico.

Township _____, Range _____, Section ____: _____

3. Applicant has proposed drilling a vertical well with a surface location _____ feet FNL and _____ feet FEL in the Application Lands and a proposed bottom hole depth of _____ feet. Applicant intends to drill the Well to a depth sufficient to test the Wolfcamp Formation.

4. Some of the parties listed in Exhibit A hereto own separate leased mineral interests in the Wellbore Spacing Unit and such parties have been offered the option to participate in the drilling of the Well, but to date one or more of such parties have refused to participate by bearing their proportionate shares of costs and risks of drilling and operating the Well. An Authorization for Expenditure ("AFE") for the Well was sent more than 30 days prior to the date of the hearing on this Application. An example of such AFE and letter is attached hereto as Exhibit B.

5. Moreover, with respect to any non-consenting owners of unleased mineral interests listed on Exhibit A, Applicant has made reasonable attempts to enter into leases with such parties but has, as of yet, been unsuccessful in such attempts.

6. In order to prevent waste, protect correlative rights and in the best interests of conservation, all interests in the Wolfcamp formations in the Wellbore Spacing Unit owned by the non-consenting parties listed on Exhibit A should be pooled.

7. Names and addresses of the interested parties with respect to this Application are as set forth in Exhibit A hereto.

WHEREFORE, Applicant respectfully requests this matter be set for hearing, that notice thereof be given as required by law and that upon such hearing this Commission enter its order:

A. That all leasehold interest owners with whom Applicant has been unable to secure an agreement for the drilling of the proposed wells and all unleased mineral interests owners who refuse to execute a lease be pooled involuntarily with respect to the Wolfcamp formations in the Wellbore Spacing Unit, and that such owners be treated as non-consenting owners under 19.15.13 NMAC and made subject to the terms and penalties provided for therein.

Respectfully submitted,

_____

Negotiating Surface Agreements

Origins of Our Laws Concerning Surface v. Mineral Rights

Disputes between surface owners who own no minerals under their tract of land and the actual mineral owner(s) go back hundreds of years. One of the first cases brought before a court happened in England in 1568. Queen Elizabeth was making a claim against the Earl of Northumberland. She argued that the gold and silver beneath his land belonged to the crown. She owned none of the surface but claimed the right of access to the silver and gold. The court found that the Queen had a "royal mining privilege" and she won the case. The outcome as well as other European cases helped shape and define our present day American laws.

One of the first cases to be tried in the United States happened in 1862. The Texas Supreme Court ruled in *Cowan v. Hardeman* that a mineral owner has the right of retrieval of minerals and the right to access the land in which the minerals are located. Such court cases have shaped the doctrine whereby the mineral estate is the dominant estate.

The Oil Company's Rights vs. the Land Owner's Rights

This doctrine has not always been popular, especially among surface owners who own no subsurface minerals. Imagine the consternation of an older retired couple who built their "perfect" retirement home on 160 acres of rural paradise only to discover they own no mineral rights and an oil company has the right to drill a well every 10-acres. In such a case, are there limitations on access or development? One could clearly argue that such development would totally devalue the couple's property, could cause mental and/or emotional trauma and that the Oil Company, acting like a "big bully" was taking complete advantage of the surface owners.

Without a doubt, the doctrine of mineral dominance has added to the negative perception of "Big Oil."

Assume, however, that the *surface estate* is the *dominant estate.* Also assume that an oil company wishes to drill a well on a tract of land that you own. Your ownership is limited to surface rights and you own no subsurface minerals. Since your estate is dominant, the Oil Company must have your permission to access the land. To enter without this permission would be trespass. Realizing that no share of production would come your way, would you grant permission of access? Most surface owners would not grant such permission unless there was a sizeable benefit coming to them. Since the benefit would not come in the form of royalty out of production, a substantial signing bonus with annual payments would most likely be in order. How large of a signing bonus would it take to entice you to grant access rights?

Doctrine of Reasonable Necessity

Understanding the tension between surface owners and subsurface owners, courts began to develop a new doctrine called the "Doctrine of Reasonable Necessity." Clearly, the outcome came to rest on the side of the oil companies. Under this doctrine, once the mineral estate becomes severed from the surface estate, a lessee, through an implied easement, is granted automatic access to the lands. This allows the lessee to use as much of the land as necessary to retrieve the minerals. In many cases, an oil company also possesses an implied easement that would include materials taken from the leased land necessary to support reasonable operations. An example of this is found in the Texas court case *Sun Oil Co. v. Whitaker*, 483 S.W.2d 808 (Tex. 1972). The court found that the lessee possessed the rights to use fresh groundwater from the lands leased in order to conduct recovery operations.

Case Law established what is known as "Reasonable Surface Use"

1. The operator can use salt water produced from the well for operations;
2. The operator can take water necessary for the operations;
3. The operator can house employees on the premises;
4. The operator can construct roads to drill sites;
5. The operator can cut down trees at the site of a well.

Doctrine of Accommodation or Alternative Means

Over time, the doctrine began to weaken as states such as Texas, Colorado, Wyoming, Kentucky, Louisiana, Utah, North Dakota, Arkansas, New Mexico and West Virginia adopted their own brand of the doctrine, now referred to as the Doctrine of Accommodation or Alternative Means. In those states, although the lessee still has the rights of access, they are required to consider the interests of the surface owner. On split estate lands, this doctrine places an obligation on the part of the oil company to assess other reasonable, practical or alternative means for recovering the oil and or gas.

Under the Doctrine of Reasonable Necessity and the Doctrine of Accommodation or Alternative Means, there was still no provision or requirement to pay surface owners damages caused from non-negligent or reasonable use of the surface. Because there were no laws in place to protect surface owners in these ways, many states began to adopt statutes that offered surface owners additional protection when damages occurred.

Three Limitations on Mineral Estate Dominance

1. The surface area is limited to what is reasonably necessary for the development of minerals.
2. Subsurface operations must occur in a genuine and faithful manner.
3. Subsurface operations must occur with due regard for the surface owner and must accommodate the surface owner if reasonable.

Surface Damage Acts

In recent years, a handful of states have enacted Surface Damage Acts. Among those are Colorado, Illinois, Indiana, Kentucky, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Tennessee, West Virginia and Wyoming.

Surface Negotiations in New Mexico

There is no common law or statutory duty to pay damages to the surface owner for drilling operations. A person who seeks to recover from the lessee for damages to the surface must prove either specific acts of negligence or that more of the land was used by the lessee than was reasonably necessary. Dominance of the mineral estate over the surface estate is recognized and the owner of the mineral estate may use as much of the surface as is reasonably necessary for its operations. However, it is customary to pay the surface owner damages, or at least reach an agreement with the surface owner as to the amount of damages, prior to entering the property for drilling operations.

Accommodation Doctrine in New Mexico

In March of 2007, the New Mexico Legislature enacted the New Mexico Surface Owners Protection Act (effective July, 2007). Under this act, operators must provide a 30-day notice prior to disrupting any surface. Among other things, the notice must include a copy of the act, disclosure of the proposed operations and a proposed form of surface use and compensation agreement. Payment of damages is required by the act. The act also requires that the operator restore the surface to “substantially the same condition that existed prior to oil and gas operations.”

Failure of the operator and surface owner to reach an equitable agreement would not stop the operator from entry on the land; however, a surety bond must be posted.

Also important to note: Operators who fail to comply with the act or the terms of the surface agreement could be subject to attorney fees and treble damages.

	AR	CO	Il	IN	KY	LA	MI	MT	NM	ND	OH	OK	PA	SD	TN	TX	UT	WV	WY
Adheres to the Accommodation Doctrine	Yes	Yes	NO	NO	Yes	Yes	NO	NO	Yes	Yes	No	NO	NO	No	No	Yes	Yes	Yes	Yes
Surface Damage Act	NO	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	No	Yes	Yes
Notice of Operations…																			
and offer to discuss access issues with the surface owner prior to operations			X		X														
and attempt to negotiate a surface damage agreement must take place.												X			X			X	X
must be given at least 15 days before operations.																		X	
and written offer for damages must be given at least 20-days before operations.										X									
and an extensive project description must be provided 30-days prior to operations.									X					X					
must take place from 30 to 180 days prior to operations.																			X
must be given no more than 60 days and of commencement								X											
must take place within 15 days after Railroad Commission issues permit																X			
Notice of drilling permits for new wells or reentry of plugged wells must be issued within 15 days of a permit.																X			
Proposal of compensation agreement must be provided 30 days prior to operations.									X										X
If no surface agreement is in place …																			
the company may post a surety bond.									X										
an offer of settlement of surface damages must be made.												X		X	X			X	
the operator must petition the appropriate court for the appointment of an appraiser. Once the operator has petitioned for appointment of an appraiser, he or she is entitled to enter the drill site.												X							
the surface owner may undertake an action for compensation in the circuit court.			X																
Punitive damages may be awarded if the operator fails to give the surface owner notice of the operations.										X									
Before entry, good faith negations must take place, an agreement signed or operator must enter a bond.																			X
If operator willfully and knowingly enters the affected lands for the purpose of commencing drilling operations without giving notice or without a surface damage agreement in place, the court is authorized to award treble damages.									X			X							X
Damages																			
Mineral owner/developer is liable for surface damages			X	X	X		X	X	X	X		X		X	X			X	
Notice of damages must be given to the operator within 2 years after damage has occurred.								X						X					
Notice of damages must be given to the operator within 3 years after damage has occurred.																X			
If notice is given, the operator, within 60 days, must make a written offer of settlement.								X						X	X			X	
Operator has a duty to restore the surface	X					X			X										X
Before operations can take place, full payment to the surface owner for all damages resulting from entering the surface estate must be made.																			
Surface damage to be determined by appraisal												X							
What landowners can require																			
Landowners can require directional drilling for multiple wells from one pad		X																	
Landowners can require adequate pollution controls		X																	
Compensation Includes																			
Loss of agriculture production, loss of income			X	X	X			X	X	X				X	X			X	X
Loss of land value								X	X	X				X	X			X	
Loss of surface use			X		X		X	X	X	X				X	X			X	
Lost value of improvements			X	X	X			X		X				X	X				X
Loss to livestock			X		X		X			X									
Loss to irrigation or water supply										X					X			X	
Damages for trees, fences, roads, structures			X		X		X												

Dealing with Surface Owner in the Crimson Ranch Prospect

Surface negotiations can often become more difficult of a task than simply leasing the mineral owner. In the Crimson Ranch Prospect, any well that will be drilled will face specific surface issues. Every surface owner is farming with the use of a center pivot irrigation system. In order to accommodate these owners and this specific issue, oil companies must carry on their operations with due regard for the surface owner's center pivot irrigation operations. Surface location of all operations, including drill site pad and roads must also accommodate the surface owner if reasonable.

Surface Rental or Surface Damage Agreement

Since operations in the Crimson Ranch Prospect will occur on cultivated farmland, the need for a *Surface Rental Agreement* or a *Surface Damage Agreement* would be appropriate. An abbreviated example of this type of agreement is found on the following pages. This agreement can address such items as value to loss of crops, surface location, access routes, damage payment, and restoration of lands after operations cease. Since the accommodation of surface owners vary from one tract of land to the next, there is no standard surface agreement.

Surface Use Agreement

In the Crimson Ranch Prospect, a second type of agreement must be secured. A plat found on a following page shows the road access to each of the six sections of land. County Road 3 runs along the west edge of Section 15 and then veers off in a northwesterly direction. The only access road to each of the surface owner's tracts of land is from a private road coming off of County Road 3 and is owned by Kingdom Farms, LTD. This road is located along the north edge of Section 15 (Kingdom Farms, LTD lands). Unless a Surface Use Agreement is secured from Kingdom Farms, LTD, oil companies would have no right to travel on this road.

Often, oil companies must deal with similar issues. They may have the rights under an oil and gas lease to access the leased lands but they do not have the rights to access those lands from lands adjacent to the leased lands. To do so would be trespass. In a case like this, the Oil Company must negotiate a Surface Use Agreement with the owner of the adjacent lands. An abbreviated example of this type of agreement is found on the following pages. This agreement will address any need to build a road or the use of a current road on the owner's land, an initial payment, an annual payment (usually a dollar amount per rod), and will often contain a formula used to calculate the escalating costs due to inflation.

Examine each of the following issues for each of the six sections of land and determine what Surface Use issues must be negotiated with Kingdom Farms, LTD.

Section 10 – The Ronald Jacobs Issue: Ronald Jacobs owns and farms Section 10. His farming operation involves center pivots, but the bigger issue is that the only access road to Ronald Jacob's farmland is off of County Rd 3 and from a dirt road located in Section 15. This road is located on and owned by Kingdom Farms, LTD. In the past, Kingdom Farms has allowed Ronald Jacobs to use the road in order to access his home and farm. In order to access Section 10, a Surface Use Agreement must be secured from Kingdom Farms, LTD.

Section 11 – The Robin Tully & Christopher Tully Issue: Robin and Christopher Tully own Section 11 as tenants in common. If you wish to drill in Section 11, both Robin and Christopher Tully must negotiate a surface agreement. Their farming operation involves center pivots. The bigger issue is that the only access road to the Tully's farmland off of County Rd 3 is from a dirt road located in Section 15. This road is located on and owned by Kingdom Farms, LTD. Once the road reaches the SW corner of Sec 11, the road cuts a path between section and quarter section lines. Each contiguous owner owns to the middle of this road. In the past, Kingdom Farms has allowed home and farm access from their road. In order to access Section 11, a Surface Use Agreement must be secured from Kingdom Farms, LTD.

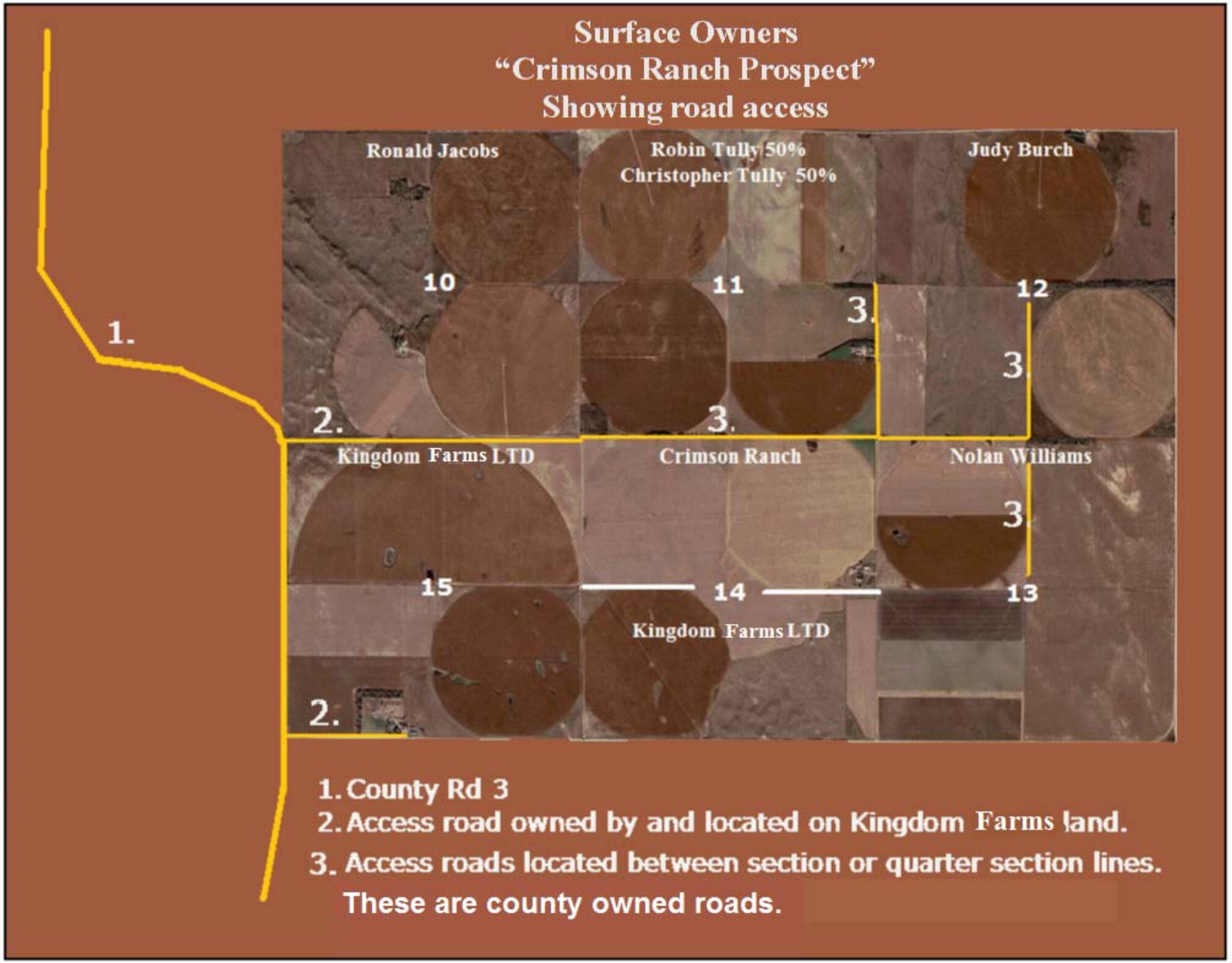
Section 12 – The Judy Burch Issue: Judy Burch owns the entire surface in Section 12 but only owns an undivided interest in the subsurface minerals. She also farms using center pivots and has similar access road issues. The only access to Section 12 off of County Rd 3 is from a dirt road located in Section 15. This road is located on and owned by Kingdom Farms, LTD. In the past, Kingdom Farms has allowed home and farm access from their road. In order to access Section 12, a Surface Use Agreement must be secured from Kingdom Farms, LTD.

Section 13 – The Nolan Williams Issue: Nolan Williams farms using center pivots and also has access road issues. The only access to Section 13 is off of County Rd 3 from a dirt road located and owned by Kingdom Farms, LTD. In the past, Kingdom Farms has allowed home and farm access from their road. In order to Access Section 13, a Surface Use Agreement must be secured from Kingdom Farms, LTD.

Section 14: N/2 – The Crimson Ranch Issue: – Crimson Ranch also uses center pivots in their farming operation. The biggest issue is that the only access to the N/2 of Section 14 is from a road located in Section 15 owned by Kingdom Farms, LTD. In the past, Kingdom Farms has allowed home and farm access from their road. In order to access Section 14: N/2, a Surface Use Agreement must be secured from Kingdom Farms, LTD.

Section 14: S/2 – The Kingdom Farms, LTD Issue: Kingdom Farms, LTD owns an undivided mineral interest in Section 14: S/2. The issue is that the only access road to Section 14 is from a road located in Section 15 owned by Kingdom Farms, LTD. In order to access Section 14: S/2, a Surface Use Agreement must be secured from Kingdom Farms, LTD.

Other issues that might need addressing includes livestock, gates, damages to crops, loss of income, loss of land values, loss of surface use access, lost value of improvements, expenses incurred from land occupied by operations, fences and improvements.



SURFACE DAMAGE PAYMENT AGREEMENT

State:
Surface Owner: _____
Operator: _____

Operator agrees to pay surface owner $_____ per location for all damages which occur in cultivated land. Operator further agrees to pay surface owner for all actual damages caused by any operator to lands, crops, pasture, livestock and any improvement situated on the lands; and Operator agrees to fill any slush pits, remove leasehold debris, and restore the premises to a reasonable condition considering the use, upon cessation of operation.

Surface Use Agreement

Surface Owner _____
Operator_____

Operator shall pay surface owner an initial rental payment of $_____ plus a rental payment of $_____ per rod for any roads built across said lands.

An Annual rental payment of $_____ per rod for any roads used by operator shall be made by January 1st of each year.

Rental payment shall be adjusted (but never decreased) at the beginning of each Lease Year to reflect the increase, if any, in the "CPI". The Adjustment Dates shall be the first day of each lease year. The adjustment Index shall be the CPI published most recently before the applicable Adjustment date. The Comparison Index for the CPI adjustment shall be the CPI published most recently before the applicable lease date.

On-Line Classes

Critical Legal Concepts Related to the Land Profession

Crucial information dealing with a myriad of critical concepts surrounding the land profession and the oil and gas industry are covered in this class. Subject matter covers state specific title issues and statutes that impact how oil and gas interests are interpreted, calculated and maintained; specific language in conveyances and how each word or the placement of the words impact the conveyance outcome; and state specific legal concepts surrounding doctrines of oil, gas, royalty, trespass, pooling, types of ownerships, and ownership theories.

A Comprehensive Study of the Oil & Gas Lease, Lease Obligations and Lease Clauses

This class is perhaps the best resource available for those wanting to learn about the management of a company's oil and gas lease assets. It is designed to offer specialized instruction for the landman, land tech. and lease or title analyst as they deal with particular lease and lease related issues.

A Comprehensive Study of Property Ownership and Transferring Title

This course takes an in-depth and thorough look at property ownership beginning with the origins of ownership in the United States. Other topics include: differing types of property ownership such as real property, personal property, community property, separate property, homestead laws or dower estates; the rules surrounding mineral and royalty ownership including surface, divided and undivided interests; the rules for conveying property; varying types of conveyances, testate and intestate succession laws and the many types of title transfers that result from court actions.

Contracts Used by Petroleum Land Management

Contracts are the heart and soul of the oil and gas industry which uses a number of unique agreements in order to explore for, develop, produce, and market oil and gas. This course will provide an understanding of contract law and is designed for all oil and gas professionals or those having a desire to work directly or indirectly in land or land administration. Contracts examined will include the Joint Venture Agreement, Area of Mutual Interest Agreement, Seismic Agreements, Surface Agreements, unit operating agreements, unit agreements, the AAPL Joint Operating Agreement and the Farmout Agreement.

An Introduction to Petroleum Land Management

Choosing a career as an oil and gas landman or land administration professional is a job path that is highly sought by many individuals. These types of jobs can be rewarding both personally and financially, offering an income that can be substantially greater than many other professions that require far more training. This class is excellent for those wishing to examine the subjects and tasks the land professional is called upon to manage, including: land and mineral ownership in the United States, leasing available minerals, land strategies, pooling, unitization, and searching for and drilling for oil and gas.

Calculating your Division of Interest

This on-line class comes with both a textbook and the Calculating Your Division of Interest Workbook and will be of tremendous value in helping the land professional calculate all types of interests, including net mineral acres, royalty, net revenue, gross working, and overriding royalty interest. Chapters also include unit calculations, calculating payouts, non-consents, farmouts, and calculating overrides based on farmout language.

Mastering Lease Obligations

This class provides the most practical, applicable, hands-on instruction available for those who administer the oil and gas lease and whose jobs are affected by the lease. The class will deal with several lease clauses including: the granting clause, habendum clause, Pugh clause, force majeure clause, operations clause, shut-in clause and rental clause.

Critical Legal Concepts

Crucial information dealing with a myriad of critical concepts surrounding the land profession and the oil and gas industry are covered in this class. Subject matter covers state specific title issues and statutes that impact how oil and gas interests are interpreted, calculated, and maintained; specific language in conveyances and how each word or the placement of the words impact the conveyance outcome; and state-specific legal concepts surrounding doctrines of oil, gas, royalty, trespass, pooling, types of ownerships, and ownership theories.

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