

#### SURFACE USE AGREEMENT

THIS AGREEMENT, made and entered into as of the 13<sup>th</sup> day of JANUARY, 2004 between Benjamin Shideler, Personal Representative of the Estate of Paul R. Shideler, deceased ("Surface Owner") and EnCana Oil & Gas (USA) INC. ("Operator").

#### RECITALS

WHEREAS, Surface Owner owns the surface of the following described property:

Township 7 South, Range 92 West, 6<sup>th</sup> P.M.  
Section 31: NE $\frac{1}{4}$ SW $\frac{1}{4}$  a/k/a Drill pad K-31E  
Garfield County, Colorado

WHEREAS, Operator is the owner/operator of the working interest in the following described oil and gas leases granting Operator certain rights to use of said property:

<u>Lessor</u>	<u>Date</u>	<u>Book/Page</u>
Paul Rob Shideler	9/7/89	772/286
Barry Craig Shideler	9/7/89	772/277
Carol Jo Shideler Bennett	9/7/89	779/777

WHEREAS, Operator's oil and gas leases provide certain limits and requirements for surface uses by Operator, as follows:

*Para. 6. "...when requested by Lessor, Lessee shall bury Lessee's 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 written consent of Lessor. Lessee shall pay for damages caused by its operations to growing crops on said land and pay for all cleanup and restoration work and all other damages to said land..."*

*Para. 17. "Equipment for the development of oil and gas shall be on a location approved by the Lessor and fenced for the protection of livestock. The Lessor shall have the right to appoint a representative to inspect all operations of the Lessee including equipment, meters, records and accounting data with respect to operations in connection with this lease."*

WHEREAS, to the extent of Carol Shideler Bennett's interest therein, Operator's use of said lands are in part governed by a Right of Way and Easement Agreement-Surface Damage Agreement entered into by said Carol Shideler Bennett and Snyder Oil Company, dated November 4, 1994, the terms of which are incorporated herein by reference;

WHEREAS, pursuant to said leases, Operator proposes to drill one (1) or more well on a new pad, subject to the terms set forth below.

#### AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration, the parties agree to the following:

##### I. GRANT

**A. GRANT:** Surface Owner hereby releases, acquits and discharges Operator, its agents, principals, partners, assigns, employees, contractors and subcontractors from any and all liability for ordinary and usual damage and detriment incident to or growing out of the moving in and out of the well location, the establishment, preparation, and use of the well site, including tank batteries as needed, and all other activities including but not limited to construction, use, maintenance, and repair of pipelines and roads, incident to and necessary for the establishment, operation, production and abandonment of the said wells, subject to the representations, agreements and obligations set forth herein.

**B. LIABILITY FOR ADDITIONAL INJURIES:** Operator shall be liable, for any injury to persons, property or livestock caused by or incident to the operations of Operator, its agents, employees, contractors or sub-contractors on the property, or any extraordinary damages due to spills of hazardous materials, explosions, or any other harmful activity of Operator.

**C. LIMITATIONS:** Any road or pipeline rights-of way granted by this Agreement are for operations related to the well(s) identified in this Agreement only. This Agreement does not grant Operator right to use of the property for operations related to any other well(s) other than those herein specified.

**D. SURFACE OWNER RESERVATION:** All surface uses not inconsistent with the rights of Operator, including the right to grant to third parties successive easements thereon or across said lands, are hereby reserved to Surface Owner.

**E. WATER RIGHTS:** This Agreement does not give Operator any right to use any water or water rights of Surface Owner, except as otherwise agreed.

**F. OPERATOR WARRANTY:** Operator warrants and represents that it has full authority to enter into this Agreement and this Agreement is valid and enforceable.

**G. LIQUIDATED DAMAGES:** Operator agrees to pay the following as agreed upon damages for its operations under this Agreement:

## **II. OPERATIONS**

**A. WELL SITE:** The well pad and well to be utilized pursuant to this Agreement are identified as follows:

Well Pad: Shideler K-31E  
Well Name Shideler (31-11D)

### **B. WELL PAD DETAILS:**

1. The disturbed area for the well pad herein above identified shall not exceed five acres, plus additional areas adjacent to pad for the stockpile of soils.
2. No compressors, other than needed in the operations of the above-identified well, shall be allowed without express written consent of Surface Owner. All dehydrator/tank sites shall be subject to the terms and conditions of this Agreement.
3. The well pad and road access shall be kept safe and in good order, and shall at all times be kept free of weeds, litter, and debris.
4. The initial slope of any drill pad to any ditch, road, fence or other improvement shall be no greater than 3:1.
5. All pits, wellheads, treaters and other dangerous areas at the well pad shall be fenced, to BLM specifications.
6. All above ground permanent well pad structures and above ground pipeline structures shall be painted with appropriate colors to blend with the surrounding landscape.
7. All drilling fluids and mud shall be handled in accord with COGCC regulations.
8. Well sites shall not encroach upon platted/deeded right-of-way or utility easements unless otherwise agreed.
9. "Above ground" dry hole markers shall not be installed unless otherwise agreed or as may be required by any applicable state or federal regulation.

### **C. WELL SITE PITS:**

1. All production pits shall be enclosed and buried, and constructed and maintained in compliance with all applicable state and federal regulations.

### **D. ACCESS ROADS:**

1. Existing roads and any new roads used by the Operator shall be upgraded to standards as described in "Surface Operating Standards for Oil and Gas Exploration and Development" 3rd Edition, Prepared by BLM/FS Rocky Mountain Regional Coordinating Committee (RMRCC) or of similar utility. Permanent roads shall be constructed with an all weather surface, not including hard surfacing.
2. Road/pipeline rights-of-way shall be limited to 45' in width, with a 16' travel surface and pipelines installed to one side of the right-of-way (currently existing pipeline excluded from the above).
3. Roads shall, at all times, be properly graded, drained, and maintained by Operator.
4. Culverts, at ditch and drainage crossings, and barrow pits shall be installed where roads cross ditches or drainages. All ditches will remain as is or will be re-structured to Owners present irrigation patterns.

5. Permanent gates shall be installed at each point where Operator's access roads intersect perimeter and cross fences. Any fences cut shall be restored to as good or better than preexisting condition. If Surface Owner or Operator chooses to lock any gates on access routes, keys will be provided to Operator or Surface Owner by the party locking the gate. Gates on roads to wells during drilling operations will only be locked if trespass problems occur and during big game rifle hunting seasons.

6. Any roads used by Operator, pursuant to this Agreement, shall remain passable at all times, if practicable, except during actual construction.

7. Surface Owner shall have the right to relocate access roads to accommodate its uses of the property provided that such road relocation does not impose undue burden to Operator. Relocated access roads shall be of similar utility, and all costs associated with such relocation, other than routine maintenance, shall be at Surface Owner's expense.

8. All road rights-of-way herein conveyed shall be for the private use of Operator, its agents, employees, and contractors only, with no right of use by the public or for access to operations on other lands. Surface Owner reserves the right to use all such roads for any purpose that does not unreasonably interfere with Operator's operations.

9. COGCC regulations notwithstanding, Surface Owner has designated some or all of the roads to be used by Operator as permanent roads. Permanent roads will not be reclaimed after completion of production activities by Operator. Any obligation or liability imposed upon Operator, as the result of not reclaiming any such permanent road, shall be assumed by Surface Owner.

10. Operator is to use best available methods to limit dust from roads, pipeline rights-of-way, and well sites, not including hard surfacing.

**E. PIPELINES:** This Agreement shall include any and all gas gathering pipelines used to transport production from these wells.

1. Operator shall have the right to use pipelines or pipeline rights-of-way granted under this Agreement for service or transport of any products produced from any wells identified herein and additional wells which may be drilled on leased premises.

2. All pipelines and flowlines outside of the permanent well site shall be buried at least three feet below original grade.

3. New pipelines shall be installed within existing road rights-of-way when practicable. Surface Owner reserves the right to cross under Operator's pipeline with future installations as long as said installations do not interfere with Operator's pipeline or road.

4. All pipelines shall be removed upon termination, unless otherwise agreed by Surface Owner at the time of termination. After removal, pipeline rights-of-way shall be restored to original grade and the site revegetated to match surrounding area.

### **III. RECLAMATION**

**A. INITIAL RECLAMATION:** After initial disturbance to the well pad, pipelines, and other facilities, except for the well site and roads, Operator shall restore all disturbed areas to their original grade and vegetation immediately following completion (weather permitting) of the well drilled on a well pad. Topsoil shall be stockpiled and replaced in conformance with COGCC.

1. The operational well pad shall be fenced. The portion of the well pad to be reclaimed shall be returned to the original topography and vegetation planted and successfully established comparable to that existing prior to construction. Fields shall be returned to grass or alfalfa, sagebrush areas shall be planted in native grasses.

2. All non-traveled portions of roadways and pipelines shall be seeded per BLM specifications.

3. If any subsequent disturbance of surface areas outside the well pad are undertaken at any time, the same reclamation and revegetation obligations will apply.

4. Operator shall be responsible for maintenance and weed control for all disturbed areas as long as the well pad is in use.

5. Any rocks excavated by Operator too large (over 100 pounds each) to be incorporated into fill or reclamation shall be stockpiled at a location designated by Surface Owner. Any useable timber, fence posts, and firewood shall be stockpiled at mutually agreed locations. All slash shall be disposed of off-

site.

6. No debris, slash or other materials, except for gas flaring, shall be burned or buried, except materials contained in the reserve pit, on the property without the express written consent of Surface Owner, which consent shall be obtained on a case by case basis only.

7. Operator shall be responsible for weed control in all areas disturbed by Operator throughout the term of this Agreement and for a period not exceeding five (5) years after termination, until re-vegetation with acceptable grasses and other vegetation has been completed. Any weed control or mediation required by a governmental entity shall be the responsibility of Operator.

**B. FINAL RECLAMATION:** Upon final termination of operations on any portion of the Property, Operator shall return roads (except permanent roads), rights-of-way, and sites, the use of which is to be terminated, to their original grade and vegetation. Unless Surface Owner requests removal, all materials including culverts and fencing (but in no event any wellhead, production pipe, or surface facility items) installed by Operator shall remain on the Property and shall thereafter be owned by Surface Owner.

1. All disturbed areas shall be revegetated with seed and plant mixtures, as specified for re-vegetation after initial drilling.

2. All reclamation and re-vegetation, as to planting periods and seeding rates of grasses, shall, at a minimum, comply with all requirements and stipulations for similar sites, as adopted or imposed by BLM.

#### **IV. GENERAL PROVISIONS**

**A. CHANGES:** Operator agrees to consult with the Surface Owner regarding all significant operations involving Operator's use of Surface Owner's surface. To the extent reasonably possible, Operator shall notify Surface Owner at least thirty (30) days in advance of any significant change regarding the use of such surface from those plans previously discussed.

**B. SURVEYS AND AS-BUILTS:** Operator agrees to provide Surface Owner with surveys and plans of all well pads, roads and pipelines, prior to construction and "as built" surveys, if obtained by Operator, after construction.

**C. CONDUCT OF OPERATIONS:** Operator shall take all necessary steps required by state and federal regulations to prevent its operations from (i) polluting the waters of reservoirs, springs, ditches, streams or existing wells located on the Property, (ii) damaging crops, timber, or pastures, and (iii) harming or injuring any wildlife or livestock.

**D. PROHIBITED ITEMS:** No firearms, pets, alcohol, or illegal drugs shall be allowed on the property at any time.

**E. HAZARDOUS MATERIALS INCIDENTS:** Copies of all forms, notices, plans, tests or other documentation regarding any spills shall be provided to Surface Owner at the same time as filing with the COGCC, local government representative, or any other regulatory agency.

**F. NOTICES:** Notice by either party hereto shall be promptly given orally, and if necessary or possible, confirmed in writing and mailed to:

**SURFACE OWNER:**

Benjamin Shideler, Personal Representative of the Estate of Paul R. Shideler, deceased  
9667 Mamm Creek Road  
Silt, Colorado 81652  
(970-876-2757)

**OPERATOR:**

EnCana Oil & GAS (USA) INC.  
950 17<sup>th</sup> Street, Suite 2800  
Denver, Colorado 80202  
(303-623-2300; fax: 720-956-3710)

Surface Owner shall be provided with a copy of any "Changes of Operator" notice when filed with the COGCC per Rule 312. A copy of any notice filed with the COGCC regarding public health and safety or emergency matters shall be delivered to Surface Owner at the same time.

**G. INDEMNIFICATION:** Operator hereby agrees to indemnify, defend and hold Surface Owner and his heirs, successors and assigns harmless from and against any claims, demands, injuries, losses, damages, or liability of any nature or kind to Surface Owner arising out of Operator or its agents, employees, contractors or subcontractors use of the Property in connection with its or their activities related to the well

and the production therefrom, such indemnity and hold harmless to include attorneys' fees and expenses.

**H. COMPLIANCE:** Operator agrees to comply with any local, state or federal laws governing Operator's activities on the Property.

**I. NOISE LEVELS:** Noise levels shall be governed by COGCC regulations, including during flaring of gas.

**J. ENVIRONMENTAL COMPLIANCE:** Operator shall comply with any and all environmental laws governing such operations and agrees to indemnify and hold Surface Owner harmless from and against any claims of third parties alleging non-compliance with any such laws that pertain to Operator's activities. Within ninety (90) days of permanent termination of production operations at the well pad, Operator shall provide Surface Owner an environmental survey report documenting that the well pad is in compliance with applicable local, state and federal laws and regulations. Said report shall be prepared by Operator or its consultants. Any noncompliance issues resulting from Operator's operations that is identified in such report shall be brought into compliance within ninety (90) days of receipt of written demand by Surface Owners or within the time specified by any governmental agency with jurisdiction over such compliance.

**K. VARIANCES:** A copy of any Operator requests for variance from surface use or reclamation regulations, not requiring a petition and notice to Surface Owner, shall be delivered to Surface Owner at the same time as delivery to the COGCC.

**L. INSURANCE:** Operator shall keep its operations insured, or comply with applicable self-insurance laws and regulations for automobile liability, and workmen's compensation insurance.

**M. TERMINATION:** All rights of Operator hereunder, including road and pipeline rights-of-way shall terminate upon the termination of the above-identified Surface Owners' Oil and Gas Lease, or any extensions thereof. Upon termination of the rights hereby granted, Operator shall execute and deliver to Surface Owner, within thirty (30) days of written demand therefore, an acknowledgment that this Agreement has been terminated. Should Operator fail or refuse to deliver said acknowledgment, a written notice by Surface Owner reciting any such failure or refusal and that this Agreement is terminated, shall, sixty (60) days from the date of recording of said notice, be evidence against Operator and all persons claiming under Operator of the termination of this Agreement.

**N. ASSIGNMENT:** This Agreement shall inure to the benefit of and be binding on the parties hereto, their heirs, successors and assigns. Assignment by Operator of some or all of the rights hereunder shall not release Operator from liability hereunder, unless specifically released by Surface Owner in writing.

**O. WAIVER OF WARRANTY OF TITLE:** This Agreement is made subject to any and all existing easements, rights-of-way, liens, agreements, burdens, encumbrances, restrictions and defects in title affecting the lands subject to this Agreement. Surface Owner does not in any way warrant or guarantee his title to the subject lands. To the extent this Agreement is deemed to be a conveyance of a real property interest it is to be considered a grant by quit claim, without warranty.

**P. SUBROGATION OF RIGHTS:** Operator shall have the right to discharge or redeem for Surface Owner, in whole or in part, any mortgage, tax, or other lien on said land which would jeopardize Operator's rights under this Agreement, and thereupon be subrogated to such lien and rights incident thereto.

**Q. SURVIVAL OF OBLIGATIONS:** All obligations, indemnifications, duties and liabilities undertaken by Operator hereunder shall survive for a period of five (5) years beyond the termination of this Agreement.

**R. OPERATOR LIENS:** Operator shall, at its sole expense, keep the lands subject to the easement granted herein free and clear of all liens and encumbrances resulting from Operator's and its agents' activities on the said lands and shall indemnify and hold harmless Surface Owner from and against any and all liens, claims, demands, costs, and expenses, including, without limitation, attorney's fees and court costs, in connection with or arising out of any work done, labor performed, or materials furnished to the pipeline.

**S. JURISDICTION AND VENUE:** The parties hereto expressly agree and consent to the personal jurisdiction of the State of Colorado District Court wherein the subject real property is located. This Agreement shall be interpreted under the Laws of the State of Colorado.

**T. ARBITRATION:** Should any unresolved dispute arise as to this Agreement, it shall, at the written request of either party, be arbitrated and determined by disinterested arbitrators, one to be appointed by Surface Owner and one by Operator within 20 days after such request. If the two so chosen are unable to agree within ninety (90) days after appointment, then they shall, within thirty (30) days after written request by either the Surface Owner or the Operator, select a third arbitrator. If the arbitrators cannot agree on the third arbitrator, either may apply to the State of Colorado District Court in and for the county wherein the lands are located, for appointment of a third arbitrator. The decision of any two of the three arbitrators so appointed shall be final.

**U. ATTORNEY FEES:** The prevailing party in any litigation, or arbitration, if applicable, regarding this Agreement or the relationship created hereby shall be awarded its costs, expenses, and attorney's fees.

**SURFACE OWNER:**

Ben Shideler P.R.  
Benjamin Shideler, Personal Representative  
of the Estate of Paul R. Shideler, deceased

Date: 1-13-04 2004

**OPERATOR:**

EnCana Oil & GAS (USA) INC.

By:

Joel S. Fox  
Joel S. Fox, Attorney-in-Fact

Date: 1/29 2004

**ACKNOWLEDGEMENTS**

State of Colorado )  
                          ) §  
County of Garfield )

On this 13<sup>TH</sup> day of JANUARY, 2004, before me personally appeared Benjamin Shideler, Personal Representative of the Estate of Paul R. Shideler, deceased, known to me to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same.

(SEAL)

My commission expires: 6-19-04

Richard L. Haynes  
Notary Public

State of Colorado )  
                          ) §  
County of Denver )

On this 29<sup>th</sup> day of JANUARY, 2004 before me personally appeared Joel S. Fox, Attorney-in-Fact for EnCana Oil & GAS (USA) INC., known to me to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same.

(SEAL)

My commission expires: 2/26/06

Ann S. McGowan  
Notary Public