

## SURFACE USE AND DAMAGES AGREEMENT AND EASEMENT

THIS SURFACE USE AND DAMAGES AGREEMENT AND EASEMENT ("Agreement") made and entered into this 12 day of Jan, 2013, by and between the Emma A. Earley Revocable Trust dated December 6, 2006, Emma A. Earley, Trustee, whose address is 5059 Keil Coulee Road, La Crosse, WI 54601 ("Surface Owner"), and Incremental Oil and Gas (Florence) LLC, whose address is 1400 16<sup>th</sup> Street, Suite 400, Denver, Colorado 80202 ("Operator"). Surface Owner and Operator are also referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS:

WHEREAS, Surface Owner is the surface owner of certain lands located in Fremont County, State of Colorado and further described as:

Township 19 South, Range 69 West, 6<sup>th</sup> PM  
Section 28: N2NESE

containing 20 acres of land, more or less

("Premises"); and

WHEREAS, Operator is the leasehold owner of certain Oil and Gas Lease(s), as set forth on Exhibit "A", attached hereto and made a part hereof (the "Oil and Gas Lease(s)"); and,

WHEREAS, Operator wishes to use a portion of Surface Owner's lands for Operator's proposed oil and gas operations, in order to properly drill, complete, rework, or re-complete, equip, operate, maintain, produce, and plug and abandon any wells and thereafter restore the surface.

### AGREEMENT

NOW, THEREFORE, for and in consideration of the sums set forth below, the mutual promises contained herein, the benefits derived by each Party hereunder and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are hereby incorporated into and made a part of this Agreement.
2. **Right-of-Way for Existing Roads.** That in order for Operator to enter, drill, complete, produce, and operate oil and/or gas well(s) and well site production facilities on the Premises, it is necessary that it cross and use certain property of Surface Owner, as provided for under the Oil and Gas Lease(s), and the parties do hereby agree as to the damages, the right of entry and surface use thereof. For and in consideration of the hereinafter specified amounts, Surface Owner hereby grants to Operator the non-exclusive right for it, its agents, employees, and contractors, and their agents and employees, to enter upon the surface of the Premises and to use Surface Owner's existing roads for access to Operator's operations on the Premises.
3. **Termination of Rights.** Except as may otherwise be provided herein, this Agreement shall automatically terminate upon the termination of the Oil and Gas Lease(s) with respect to all or any portion of the premises.
4. **Normal Damages.** Operator shall pay Surface Owner the sums stated below as full settlement and satisfaction of all damages to the Premises as a result of, incident to or in connection with the usual and customary exploration, drilling, completion and production from wells to be located on the Premises. No payments shall be required under this section if Operator elects not to construct a well pad on the Premises.
  - a. **Well Pads.** Operator agrees to pay Surface Owner the sum of ~~Twenty Thousand Dollars (\$20,000.00)~~ per well pad, limited to an area not to exceed Four (4) acres in size, exclusive of access roads constructed on the Premises, regardless of the number of wells drilled from such pad, for use of the well pad area, preparation and use of mud, reserve and water pits, construction, installation and maintenance of production equipment and facilities such as electrical lines, flow lines, gas pipelines, separators, treaters, tank batteries and any other equipment or facilities necessary or convenient for the production, transportation, gathering and sale of oil and/or gas, including burial of plastic pit liner on location;

## SURFACE USE AND DAMAGES AGREEMENT AND EASEMENT

- b. **Cropland Locations.** All crop damages, if any, will be paid according to prevailing local rates. If necessary, the Colorado Department of Agriculture will arbitrate for any conflict between surface owner's damage claims and Operator's proposed settlement;
  - c. **New Access Roads.** [REDACTED] rod for right-of-way and surface damages from construction of new access roads located on the Premises; and
  - d. **Pipelines.** [REDACTED] rod for right-of-way and surface damages for the installation of buried gas or oil pipelines that are not located in the same right-of-way as roads constructed per Article 4.b. above.
- 5. **Annual Payments.** In the event one or more wells are completed as capable of producing oil and/or gas and a tank battery is set, then for each year that IOG has operations on the Premises, Operator shall pay Surface Owner an additional consideration as follows:
  - a. [REDACTED] for use of each well pad including production equipment and tanks located on the Premises to be paid annually on the anniversary date of the completion of the first productive well on such well pad as such completion date is defined by the Colorado Oil and Gas Conservation Commission (the "COGCC"); and
  - b. [REDACTED] annually on such anniversary date for the continuing use of Surface Owner's existing roads and any other roads constructed by Operator located on the Premises.
- 6. **Unusual Damages.** If the operations of Operator cause damage to real or personal property upon the Premises which is not associated with usual, convenient and customary operations, including but not limited to, damage to livestock, structures, fences, culverts, cement ditches, and irrigation systems, Operator shall promptly repair such damage or pay reasonable compensation for same to Surface Owner.
- 7. **Consultation.** If requested by Surface Owner, Operator shall consult with Surface Owner or Surface Owner's representative as to the location of the well pad, access roads, flow lines, tank batteries, gas sales lines, and other associated production facilities and to coordinate the movement of equipment into and out of the location. The design, construction and/or installation of the well site location, access roads, flow lines, tank batteries, gas sales lines, and other associated production facilities will be at the discretion of Operator. Surface Owner shall not unreasonably delay Operator's activities as contemplated in this Agreement.
- 8. **Waiver of COGCC Rule 305 and 306 Notices.** Surface Owner hereby waives the twenty (20) day posting notice required by the Colorado Oil and Gas Conservation Commission ("COGCC") Rule 305 and the thirty (30) day advance notice required by the COGCC Rule 306 and agrees to execute a separate waiver for filing with the COGCC if requested by Operator as to wells drilled hereunder.
- 9. **Notice to Tenants.** With respect to notices required to be given under COGCC Rule 305, it shall be the responsibility of the Surface Owner to give notice of the operations contemplated in this Agreement to the tenant farmer, lessee or other party that may own or have an interest in any crops or surface improvements that could be affected by such operations. As a courtesy to Surface Owner and tenant(s), Operator will attempt to notify said third party prior to commencement of operations, but shall be under no obligation to do so.
- 10. **Topsoil Reclamation.** All topsoil removed during well pad preparation and reserve and water pits construction (but not including buried flow lines and gas pipeline installations, which will be accomplished by trenching, if less than 24 inches in width) shall be segregated and kept separate from subsoil. Prior to replacing topsoil, bentonite drilling mud and fluids remaining in pits as a result of drilling operations shall be removed and/or may be spread on the surface if so desired by Surface Owner. After subsoil has been replaced, topsoil shall be restored to its original location and condition as nearly as reasonably practical in the course of restoration activities. Operator shall replant natural grasses and take all reasonable steps necessary to assure there is no soil erosion resulting directly from Operator's activities.
- 11. **Site Restoration.** Operator shall restore the Premises to its original condition upon completion of a well, as nearly as reasonably practical. All unneeded surface

## SURFACE USE AND DAMAGES AGREEMENT AND EASEMENT

equipment and materials associated with operations, such as concrete, plastic, pipe, cable, and similar waste materials and refuse, shall be removed and the pit liner buried. Weather permitting, reclamation and restoration operations shall be completed as soon as is reasonably feasible following completion of drilling and subsequent related operations or the plugging and abandonment of the last well on each well pad, as applicable.

12. **Mud, Reserve and Water Pits.** Operator agrees to use reasonable efforts to minimize the size of mud, reserve and water pits upon the Premises. Such pits shall be adequately fenced with such fencing to be maintained regularly.
13. **Prohibitions.** The possession of firearms, alcohol, and illegal drugs upon the Premises shall be prohibited. No hunting or fishing shall be allowed. Access to the Premises shall be limited to existing or newly constructed roads.
14. **Gates and Livestock.** If livestock are present, Operator's employees, contractors or representatives shall give due consideration to livestock on the Premises and shall close all gates after use or shall post a gate guard at any such gate that is opened for a period longer than that necessary to allow for immediate traffic to pass so as to prevent any livestock from passing through the gates. Operator shall be allowed to possess its own key or lock to all gates used to access well pads and related equipment and facilities.
15. **Road and Well Pad Maintenance.** At Operator's discretion, adequate road base material shall be applied to improve access roads and tank battery sites where necessary. Operator shall maintain roads utilized by Operator to minimize excessive dust and avoid erosion. Road markers shall be installed to assure effective road location identification. At the discretion of Operator, water bars, culverts and double ditching shall be used to protect the surface and shall be regularly maintained. Surface Owner hereby consents (Per COGCC Rule 907d.3.B.iii) to Operator being allowed to apply drilling fluids, including water based bentonitic drilling fluid, to the site and access road for maintenance and dust control.
16. **Successor, Assigns and Agents.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their agents, successors, and assigns and may be executed in counterparts and/or on different dates, each of which shall be deemed to be an original for the purpose hereof.
17. **Damages and Indemnity.** Operator, on behalf of it and all of its employees, contractors and representatives conducting work upon the Premises pursuant to this Agreement, agrees that it will be fully and solely responsible to Surface Owner for damages and indemnity as follows:
  - a. **Damages.** Operator shall be responsible for all damages directly or proximately caused by its operations to persons, property, including but not limited to gates, bridges, roads, culverts, cattle guards, fences, dams, water bars, dikes, natural vegetation, grain and grain fields, pastures, hay meadows, stock watering facilities, livestock and all other improvements. Should any fences be destroyed or damaged, directly or proximately caused by the operations of Operator, they shall be repaired by Operator within forty-eight (48) hours of receiving notification from Surface Owner, or Surface Owner may conduct or contract for third parties to conduct such repairs and bill Operator for actual time and expenses incurred at a rate ~~not to exceed~~.
  - b. **Indemnity.** Operator agrees to indemnify and hold harmless Surface Owner and Surface Owner's agents and employees against any loss, liability, expense or damage incurred by third persons or damage to property arising out of or resulting from Operator's activities on the Premises, including violation of law, order, rule or regulation, except any such injury or death caused directly by Surface Owner's gross negligence or willful misconduct.
18. **COGCC Rules and Regulations.** Operator agrees to comply with all the COGCC rules and regulations regarding the activities proposed herein.
19. **Interpretation.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Colorado, except to the extent that it shall be necessary to comply with federal laws, rules or regulations. No covenants or conditions not expressed in the Agreement shall effect or be effective to interpret, change or restrict

## SURFACE USE AND DAMAGES AGREEMENT AND EASEMENT

this Agreement. No change or amendment of any of the provisions hereof shall be binding unless in writing executed by both Parties, nor shall any waiver be deemed effective unless executed in writing.

### 20. Additional Provisions.

- a. **Liens.** Operator shall, at its sole cost, keep the property free and clear of liens and encumbrances resulting from its activities hereunder.
- b. **No Warranty.** This Agreement extends to the rights of Surface Owner and is in no way a guarantee or warranty of Surface Owner's ownership interest.
- c. **Recordation.** This Agreement shall not be placed of record without the written consent of the Parties. However, the Parties agree to execute a Memorandum of Agreement suitable for recording, and which may be recorded by either party, generally referring to this Agreement and describing in general or specific terms, the location of any site, facility, road or pipeline of Operator. In the event such Memorandum of Agreement is placed on record, Operator agrees to execute and deliver to Surface Owner, upon termination of its use of the Premises, a release instrument, suitable for recording, to terminate the rights contained herein and under said Memorandum of Agreement. This Agreement shall be considered confidential in nature by the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands effective as of the day and year first above written.

### OPERATOR

#### INCREMENTAL OIL AND GAS (FLORENCE) LLC



Sharon Regan-Williams  
Vice President Land & Business Development

Date: 7 Jan 2013

### SURFACE OWNER

#### Emma A. Earley Trust

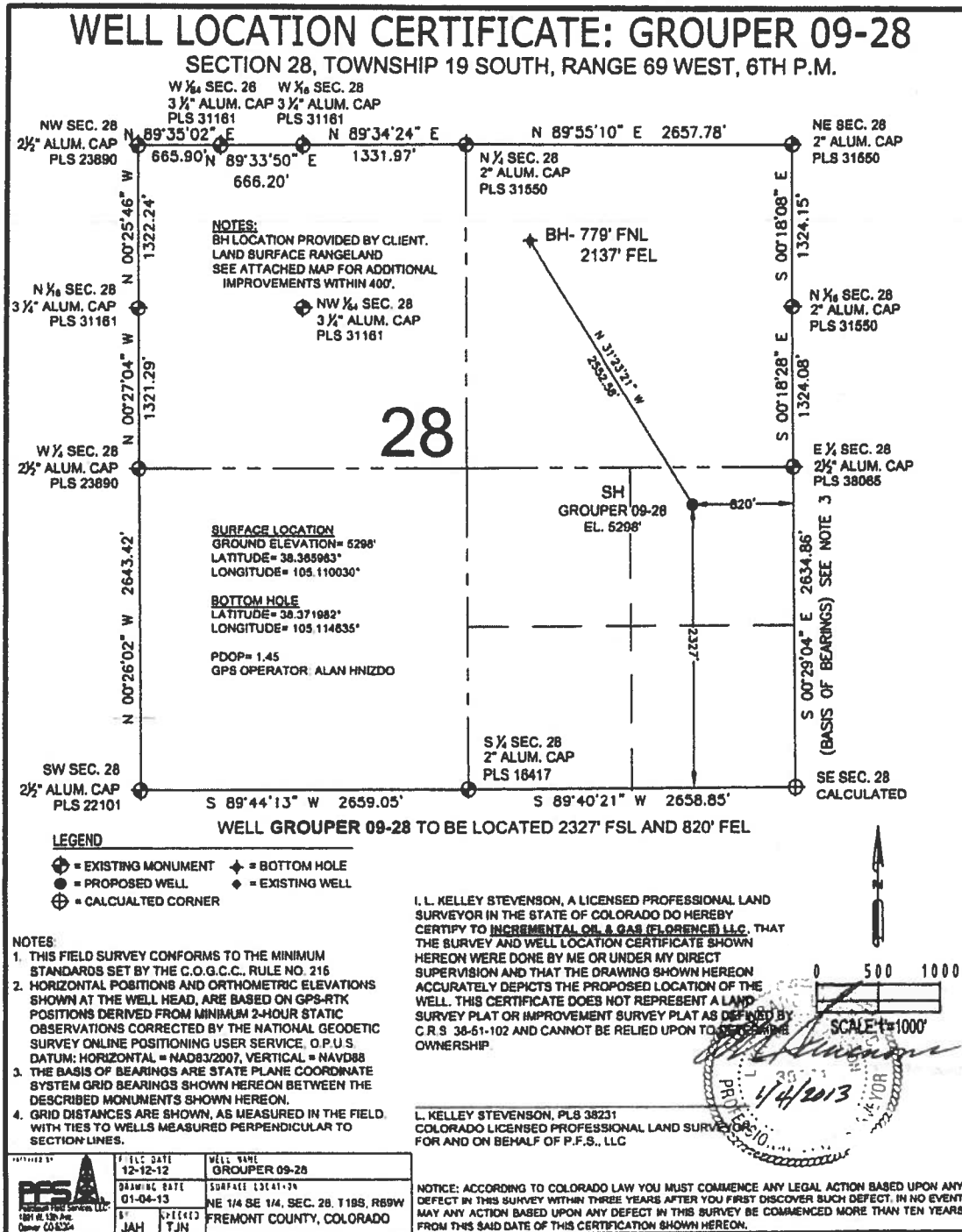
Signature: 

Date: 1-10 2013

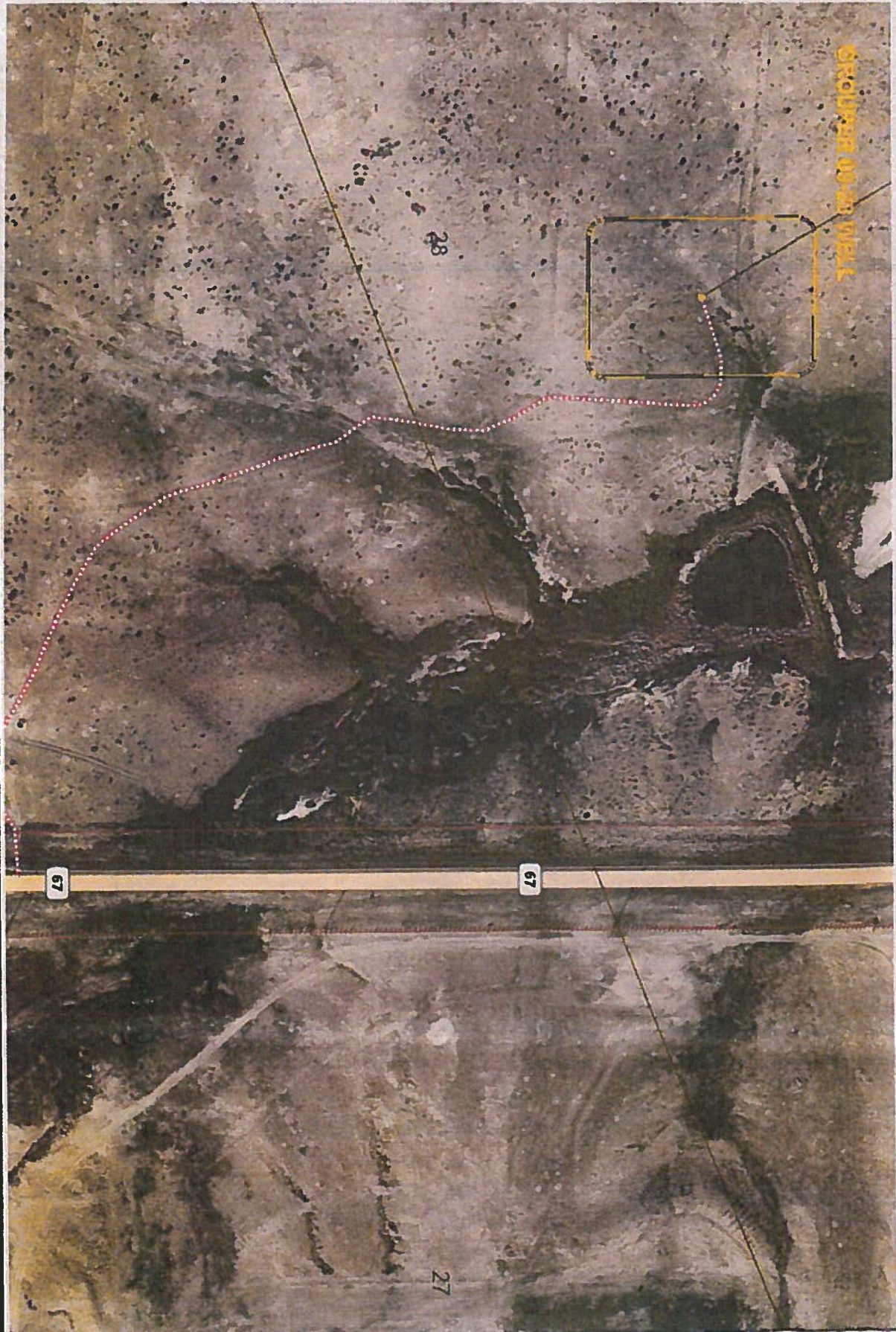
Printed Name: Emma A Earley

Title: Trustee

PROPOSED LOCATION









**Permit Tech Review:**  
**Sundry for Notice of Continued Temporary Abandonment Status**  
5-3-11

Rule 319.b.

**b. Temporary Abandonment.**

(1) A well may be temporarily abandoned when completed, upon approval of the Director, for a period not to exceed six (6) months provided the hole is cased or left in such a manner as to prevent migration of oil, gas, water or other substance from the formation or horizon in which it originally occurred. All temporarily abandoned wells shall be closed to the atmosphere with a swedge and valve or packer, or other approved method. The well sign shall remain in place. If an operator requests temporary abandonment status in excess of six (6) months the operator shall state the reason for requesting such extension and state plans for future operation. A Sundry Notice, Form 4, or other form approved by the Director, shall be submitted annually stating the method the well is closed to the atmosphere and plans for future operation.

Sundry will be data entered and in a "new mail" purple folder

Verify Header Info (Page 1, Lines 1 – 11; Page 2, Lines 1 - 4) with database

Determine if sundry is:

- Initial extension request for Temporary Abandonment Status beyond 6 months
- *Notice of Continued TA Status*

Verify Page 2 (or an attachment) provides, per Rule 319.b.(1):

- Method the well is closed to the atmosphere
- Plans for future operations
- Initial extension request must also have: Reason for extension request

Currently we'll accept almost any kind of gibberish for "Plans for future operations". As long as something is said we're pretty happy. It's tough to evaluate this sort of stuff and is it really worth our time to argue with an operator about it? I don't like the requirement. Why the operator keeps it is their business. How they keep it is ours.

My question is how much the "Reason for extension request" and "Plans for future operations" are the same or similar. I'm not sure myself. In what I do I don't see what I consider to be 6-month requests. Everything TA'd that I see has been that way for longer than 6-months, usually much longer. So, even if the document in my mitts is the first in what should have been a long series I go with giving them 1-year and checking only for the Method and Plans part of the equation. Diana is trying to train me (geez I hate sardines) to do it by the book. We've made the operator file a 6-month request and then begin the annual cycling. I think I've done it a couple of times but haven't seen anything return to my desk yet.

Verify any & all details provided match database:

## Permit Tech Review:

### Sundry for Notice of Continued Temporary Abandonment Status

5-3-11

- Depth for bridge plug(s), packer(s), etc.
- Perfs and Formation(s) isolated below plug(s) or packer(s)
- Etc

Do you really want your people to get involved in this stuff? I'd love for someone else to do it but I sort of feel I should get involved. The quantity of this type of info on a TA Sundry varies from Operator to Operator. I do look for a bridge plug depth (don't remember a packer being cited at all) but not usually the perfs. If the TA Status is due to removal of surface equipment then we may not have any details to worry about. The Citation O&G Sundries that Debra Harris sent us recently have more info than I usually see, BP depth, perfs (some not all), and formation.

Assign Sundry to Bob Koehler in Forms Processor and take the paper form to him for

- Review
- Approval
- Update well TA status in database if needed

Re the last bullet: My brain sieve is in operation, I bet you have a chart for how many times I've asked for clarification on this. When we finalize this document I will post prominently in my cube so I won't keep bothering you and Thom about it.

Because we are working from a Sundry – Request for Continued TA Status your last bullet implies that I can go into Well Update and change the Well Status to TA. I would not change any of the intervals. Is that right? If I see that the Status of an Interval needs updating I should poke the operator for that on a Form 5A, right?