# UPDATE TO 1990 CAPL OPERATING PROCEDURE
## Industry Comments on November, 2006 Draft
## (July 19, 2007)

| PROVISION | COMMENTS |
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| General Comments | Once again, we commend you and the 2007 CAPL Operating Procedure Committee for all of the hard work and effort in preparing this industry draft and thank you for providing Company B the opportunity of commenting on this document. We look forward to receiving the final version of the 2007 CAPL Operating Procedure for industry use. **(Company B)**<br><br>Upon review of the most current draft, many of Company A's comments have been dealt with however, there are still a few and a few new ones that came to light on the review. We thank you for the consideration of our comments and offer the following. We would note that this agreement is getting very close on some of these points. …<br><br>We wish to take this opportunity to thank the members of this committee for their time and effort in putting forth the new Operating Procedure. We recognize that not all users of the document will be happy with the entire document; however we wish to congratulate you on working towards a document that is a fair balance between the needs of operators and non-operators. **(Company A)**<br><br>Company D looks forward to CAPL's response, and we would like to acknowledge the time and effort put forward by the 2007 Operating Procedure Committee in drafting this document. **(Company D)**<br><br>On behalf of the Company H Commenting Committee, we would like to acknowledge all of your effort and detailed work that has gone into the Draft 2007 CAPL Operating Procedure. It has been a great opportunity to review this document, and we look forward to the positive implications it will eventually have on our complex and changing industry. Please find attached a copy of our questions, comments and concerns that were raised during our review sessions. **(Company H)** |
| 1.01(Abandonment) | |
| 1.01(Acc. Procedure) | |
| 1.01(Affiliate) | |
| 1.01(AFE) | |
| 1.01 (Agreement) | |
| 1.01(Business Day) | |
| 1.01(Casing Point) | |
| 1.01 (Commenced) | "Commenced" – the change to specifically define the spudding of the well as the commencement date would seem to be a positive one. However, as you have noted, this will create other potential difficulties in remote or difficult stakeholder areas where lengthy access road construction or regulatory hearings may frustrate the operator's best efforts at getting the well spudded within 120 days, while potentially already having expended considerable cost and effort. A couple of suggestions:<br>- in any clauses where a time to commence well operations is provided (7.01, 10.02, etc.) provide a "120 days or ___ days" optional provision to ensure that parties consciously consider this issue before finalizing the agreement;<br>- a more substantial change would involve adding a "pre-commencement" studies/field operation/stakeholder relations provision that would specifically enable a proposing party to commence the necessary pre-drilling activities with some idea of the level of partner cost sharing they will enjoy. A party not |

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| | participating in these prior studies/operations etc. could still participate in the drilling operation but would need to pay a penalty (say 200%) of the pre-commencement costs incurred. This recognizes that the nature and cost of a proposed well can change dramatically once the pre-drilling stakeholder and regulatory requirements have been satisfied, but that it is not fair to make the proposing party incur all these costs at its sole cost without getting some reward for undertaking work that could ultimately benefit all parties. **(Company F)**<br><br>**Response:** *(1) For context, the increase of the general Commencement period to 120 days from 90 and the clear statement in Clause 1601 that the Force Majeure Article extends this period should significantly mitigate many of the potential pitfalls with the movement to the Commenced equals Spudded approach for new wells.*<br><br>*We agree, though, that this provision will be one of the more frequently amended provisions of the document. We have identified the limitations associated with the 120 day timing in a number of different annotations in the document.*<br><br>*We differ, though, in how best to address this in the document.*<br><br>*Our overall philosophy can be described as options where necessary, but not necessarily options. When dealing with something that might be amended under 20% of the time, our inclination is to recognize the potential for amendment in a way that mitigates the likelihood that users will overlook the issue for circumstances in which an amendment should be considered. However, we try to do so in a way that does not destabilize a provision that should be relatively stable more than 80% of the time.*<br><br>*We believe that the inclusion of the suggested optional data field would potentially destabilize the provision for situations other than the operating areas for which amendments are contemplated.*<br><br>*To mitigate the risks to users, we have made the following additional changes as a result of your comments: (i) expanded the annotations on this point; (ii) recommended to users in the annotations that this is an optional data field that should be included on a company's internal election sheet; and (iii) modified the election timing for a Production Facility in Clauses 7.01 and 10.03 so that the extended election period is an extra 30 days above the prescribed number of days. This structure makes it easier for users to attain their desired outcome by updating the number of days in Clauses 7.01 and 10.03, without the need to make additional consequential changes. We have also added some additional flexibility in those provisions for the B.C. lease continuation as a result of "committed" work, as a result of some other comments on that issue.*<br><br>*(2) Agree that this will be something that should be considered in some special circumstances. However, it is an exception that is best left to the Parties to address on a custom basis in their particular agreement or as a specific negotiation at the time.*<br><br>*We have added an annotation to the definition of AFE in Clause 1.01 (with reinforcement in the miscellaneous annotations at the end of the document) about the issue and suggested that it may often be beneficial to address these types of charges through an interim AFE that can be integrated into the drilling AFE in due course. We have identified that there may be some circumstances in which the magnitude and risks associated with these costs may warrant special handling whereby there is a premium attached for failure to participate in that pre-Spud work if the non-participant later wants to participate in the well.*<br><br>A concern was raised that in the Foothills and Northern Areas, the drilling season is short and it is not unusual to spend significant dollars preparing a location prior to spud. The definition of 'spud' is quite specific, and doesn't factor these costs in. i.e. you spend |

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| | $1MM on site prep, and then can't spud until the following drilling season. Is it possible to take this into consideration and revise the definition of "commenced" to include these expenditures (perhaps as a certain percentage of the ops notice)? **(Company G)**<br><br>**Response:** *We understand this concern, but believe that it is something that users need to understand and address on a custom basis where appropriate for their circumstances. See Response to the previous comment.* |
| 1.01(Commercial Quantities) | It seems inconsistent to use "hydrocarbon substances" in this definition rather than the defined terms Outside Substances and Petroleum Substances (based on the assumption that these terms together define hydrocarbon substances).<br>Recommendation: For clarity, either define hydrocarbon substances, or replace with Outside Substances and Petroleum Substances. If this is not an option, an annotation would make this definition more transparent. **(Company H)**<br><br>**Response:** *We prefer not to make this change. It is inherent in the generic term that it is one or both of Petroleum Substances and Outside Substances, depending on the circumstances. Making this change would drive other changes, such as in the def'n of Development Well. We also believe that the inclusion of the additional language would increase the "fog" factor in the presentation of the provisions.*<br><br>*We have modified the annotation slightly to be more transparent about this, though.*<br><br>"Paying Quantities" and possibly "Commercial Quantities" – consider adding language here to cover the disposal, reinjection and/or general handling of non-hydrocarbon substances or non-Petroleum Substances **(Company F)**<br><br>**Response:** *Modified to address the concern.* |
| 1.01(Completion) | |
| 1.01(Completion Costs) | |
| 1.01(Deepen) | |
| 1.01(Development Well) | |
| 1.01(Drilling Costs) | |
| 1.01 (Earning Agreement) | There is confusion with the references to "another Party" and "other Party".<br>Recommendation: Since these references are to a party not currently a Party to the Agreement, they should be "party" instead of "Party".**(Company H)**<br><br>**Response:** *We don't believe that the definition is being read correctly. The relevant reference in the def'n is: "…a farmout or like agreement between a Party and another Party or person, the substance of which is that the other Party or person has the right, obligation or option to acquire a Working Interest in the Joint Lands…".*<br><br>*The farmee under the farmout being entered into by a Party might be: (i) another <existing> Party; or (ii) another person not currently a Party.*<br><br>*Have slightly modified the definition to make the distinction more transparent by modifying the "person" references to "third party".* |
| 1.01(Equipping) | There was some confusion with respect to the meaning and possible interpretations of "single Completed Well" (i.e. single Completed Well or a single Completed zone).<br>Recommendation: Replace "single Completed Well" with "individual Completed Well".**(Company H)** |

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| | **Response:** *Modified to address the concern.* |
| 1.01(Equipping Costs) | |
| 1.01(Exploratory Well) | |
| 1.01 (Extraordinary Damages) | The clause seems reasonable except for the insertion of "…reservoir or formation damage…" as it pertains to non-operator to non-operator liability. It seems to us that if a non-operator has caused either reservoir or formation damage as a result of a breach of this agreement (for example: conducting an independent operation when it had no authority to do so), it should not be able to argue that those damages are beyond the scope of what the parties can recover from it. **(Company A)**<br><br>**Response:** *For context, the draft provision is generally consistent with the typical provision used in international and Canadian frontier agreements, such as in the definition of "Consequential Loss" included in the 2002 AIPN International Operating Agreement.*<br><br>*The handling of "reservoir or formation damage" is also very similar to the outcomes prescribed by the exception at the end of Clause 401 of the 1990 document that limited the Operator's responsibility for "losses suffered by the Joint-Operators respecting the loss or delay of production from the joint lands, including, without restricting the generality of the foregoing, loss of profits or other consequential or indirect losses applicable to such loss or delay of production." Although the 1990 document did not refer directly to "reservoir or formation damage", it is one of the scenarios in which there could be a loss or delay of production.*<br><br>*We also note for context that a party that sees an operation proceeding when there is no authority is free to seek injunctive relief from the Court to try to stop the activity. It's also important to remember that the limitation in Clause 4.04 does not operate to expose the injured Party to third parties damage claims of this type that may be awarded by a court-just those for its own losses.*<br><br>*We have added an annotation to be more transparent about the preceding sentence. We otherwise have great difficulty making the suggested change.*<br><br>*It is difficult to reconcile a general exception for consequential loss that qualifies the potential remedy available for such items as lost opportunity, lost profits, the inability to produce and a delay in production with the retention of a remedy that retains responsibility for those items insofar as they are linked to reservoir or formation damage. Even if the phrase were deleted from the parenthetical reference, one can argue that it is already within the scope of the "consequential" reference, as well as some of the other parenthetical references that would be retained. The required modification would need to be one that would basically provide that the identified bin of damages would be excluded except insofar as they were attributable to reservoir or formation damage.*<br><br>*Our sense from the general feedback on the liability and indemnification provisions of the document over the course of the project is that there is a desire in industry to limit the Operator's sole liability, given that modest overhead recoveries provided to an Operator under the Accounting Procedure. This is particularly the case when the losses associated with these types of damages could be very expensive, even if the loss could be quantified sufficiently for damages to be awarded.*<br><br>*Our overall conclusion is that a modification that takes away protections already available to the Operator under the 1990 document would be received very negatively from other of the large companies, particularly where the change is inconsistent with the most current industry practices in international and frontier agreements.* |

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| | *Given our desire to minimize lightning rod provisions in the document, this is a change with which we are not comfortable. Your company will need to look at this as a custom amendment if you feel strongly about including it in your agreements.*<br><br>"Extraordinary Damages" – we are having a hard time understanding why "ii" needs to be included, and specifically why "associated Environmental Liabilities" should be considered "Extraordinary Damages". Would this not serve to draw non-participating parties into a position of potentially having to incur environmental clean-up costs for an operation in which they did not participate, or in a situation where they did participate but the operator's gross negligence/wilful misconduct creates the environmental liability? **(Company F)**<br><br>**Response:** *See the annotations. Losses associated from a control of well problem are the biggest potential risk to an Operator. Modified the reference to Environmental Liabilities to be clearer that the reference added in the May working draft is limited to (ii).*<br><br>*Modified the annotations to be more transparent that the net effect of the combination of the definition and Clause 4.04 is that the exemption for Extraordinary Damages does not address any third party claims for which I'm entitled to be indemnified.* |
| 1.01(Facility Fees) | |
| 1.01(Facility Usage) | |
| 1.01(First Pt. Of Measurement) | |
| 1.01(Force Majeure) | |
| 1.01(for the Joint Account) | |
| 1.01(Gas Price) | |
| 1.01(Gross Negligence or Wilful Misconduct) | "Gross Negligence" – for consistency, throughout the definition use "act, omission, or failure to act". **(Company F)**<br><br>**Response:** *Modified to address the concern.*<br><br>In the third line, what is the reasoning in adding "or to the environment" to this definition? Does "property of another person" cover the environment? **(Company H)**<br><br>**Response:** *Was included at the request of another company in their comments. It seemed appropriate, especially given the degree to which it could be difficult to link property rights to general environmental damage.* |
| 1.01(Head Agreement) | "Head Agreement" – replace "included" with "appended" **(Company F)**<br><br>**Response:** *Modified to address the concern.* |
| 1.01(Jt Lands) | |
| 1.01(Jt Operation) | |
| 1.01(Jt-Operator) | |
| 1.01 (Jt. Property) | |
| 1.01(Losses and Liabilities) | |
| 1.01(Market Price) | **(ed note-Comment is on May working draft that was shared with some larger companies)**"Market Price" – in the first option, 4$^{th}$ last line, we suggest that the words |

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| | "liquid sales point" be replaced with "point of sale". **(Company F)**<br><br>**Response:** *Modified to address the concern.* |
| 1.01(Non-Operator) | |
| 1.01(Non-Taking Party) | |
| 1.01(Operating Costs) | "Operating Costs" – suggest that a provision be added here for water injection/disposal wells. The phrase "to use assets within Equipping" seems unclear. **(Company F)**<br><br>**Response:** *(i) Water injection and disposal wells held under the Agreement and serving more than one well would be a Production Facility. If they are not held under this Agreement, the costs would be captured under Facility Fees. If they serve only a single well, they're presumably held for the Joint Account, as you would have no way to enforce a penalty for non-participation and then you'd probably force them into one of the definitions to ensure that the operation and maintenance charges are picked up.*<br><br>*(ii) Edited the phrase about Equipping to address the concern.* |
| 1.01(Operating Procedure) | |
| 1.01(Operation) | |
| 1.01(Operator) | |
| 1.01(Party) | |
| 1.01(Participating Interest) | |
| 1.01(Paying Quantities) | "Paying Quantities" and possibly "Commercial Quantities" – consider adding language here to cover the disposal, reinjection and/or general handling of non-hydrocarbon substances or non-Petroleum Substances **(Company F)**<br><br>**Response:** *Modified to address the concern.* |
| 1.01(Petroleum Substances) | Amend as follows: "Petroleum Substances" means petroleum, natural gas ***(which includes natural gas from coal or shale)*** and every . . . Rationale: The suggested wording is clarifying that CBM is natural gas - the previous wording suggested that CBM was separate to natural gas. **(Company D)**<br><br>**Response:** *Modified to address concern.*<br><br>"Petroleum Substances" – add "or petroleum" to "(including natural gas **or petroleum** from coal or shale)" **(Company F)**<br><br>**Response:** *The inclusion would make the flow awkward. We had included the reference to reach out to the unconventional gas customer base. We're not aware of any issues on the petroleum side of things.*<br><br>Is it necessary to specifically include coal and shale to this definition? What is the reasoning in adding this? The composition of Natural Gas is the same regardless of its source and it seems unnecessary to include coal and shale in this definition.<br>Recommendation: Remove the reference to coal and shale in the definition. **(Company H)**<br><br>**Response:** *This was done for the benefit of the unconventional gas players to make the application to unconventional gas more intuitive to them and to build their support. Reworked in the May draft because of a comment about the presentation. The current version is:* |

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| | *"Petroleum Substances" means petroleum, natural gas (including natural gas from coal or shale) and every other mineral or substance for which the Title Documents grant the right to explore, develop or produce.* |
| 1.01(Production Facility) | |
| 1.01(Recompletion) | |
| 1.01(Regulations) | |
| 1.01(Reworking) | |
| 1.01(Schedule) | |
| 1.01(Sidetracking) | Sidetracking" – we have many non-horizontal wells that are not "vertical" per se. Suggest that you replace the word vertical with "original well trajectory". **(Company F)**<br><br>**Response:** *Modified to address the concern.* |
| 1.01(Spacing Unit) | It may be better to tie this definition back to the product contained in "Petroleum Substances" produced. The regulations speak to this but this might tighten things in the agreement specifically in (b). **(Company A)**<br><br>**Response:** *Modified the reference to "the applicable Petroleum Substances" to address the concern.* |
| 1.01(Spud) | |
| 1.01 (Suspend) | "Suspend" – suggest that the words "completion, equipping" be added in line 1 after the word "drilling". Also, after the word "means", add ", except for a well that has been abandoned,". **(Company F)**<br><br>**Response:** *(1) Modified to address the concern, but didn't add an Equipping reference.*<br><br>*(2) Modified to address the concern.* |
| 1.01 (Title Administrator) | |
| 1.01(Title Documents) | |
| 1.01(Working Interest) | Recommendation: "hereunder" is unnecessary, and should be taken out of this definition. **(Company H)**<br><br>**Response:** *Prefer to maintain it, as it links having a WI to a status under the Operating Procedure, versus the silent partner scenario. See the comments from another party on the 2005 draft.* |
| 1.01Other | |
| 1.02(a) – (f) | |
| 1.02(g)-(m) | Clause 1.02 (j) –after the word "sales" in the second line, add the words "or transfer". **(Company F)**<br><br>**Response:** *Modified to address the concern.* |
| 1.02B | |
| 1.03 | |
| 1.04 | |
| 1.05 | |

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| 1.06 | |
| 1.07 | |
| 1.08 | |
| 1.09 | This clause does not sufficiently addresses amendments done via electronic medium (i.e. e-mail). Is this Clause saying that electronic medium is not adequate when doing an amendment?<br>Recommendation: Electronic medium should be explicitly addressed in this clause, or "or acknowledged" should be added after "executed".**(Company H)**<br><br>**Response:** *What is "acknowledged"?*<br><br>*This looks like a potential hot button issue that could compromise our ability to obtain broad based support for the document.*<br><br>*We have a strong preference to see the electronic issue covered in an industry agreement, rather than the Operating Procedure being the champion of the issue when the degree of support is unknown. This could, by itself, create a substantial barrier to support for the document.*<br><br>*The industry agreement approach also offers the advantage of a process that addresses the full suite of agreements in your system.* |
| 1.10 | |
| 1.11 | Clause 1.11 – replace "Supercedes" with "Supersedes". Add at the end of the first sentence, "; provided, however, that all or any portion of the Joint Lands that would be required to be operated hereunder would survive such supersession". **(Company F)**<br><br>**Response:** *(1) While both spellings are correct, the spelling you suggested is certainly the prevalent spelling, so the document has been modified.*<br><br>*(2) Didn't understand why the change was necessary. The superseding always pertains to the other agreement, not the Operating Procedure.* |
| 1.12 | |
| 1.13 | |
| 1.14 | |
| 1.15 | |
| 1.00-Misc. | Suggest that we add a new clause 1.16 entitled "Using the terms Party and Operator includes any Affiliate thereof". A need for a new clause here arises from a concern respecting liability obligations of affiliates and the need for consistency throughout the document. **(Company F)**<br><br>**Response:** *Didn't understand the concern. The provision didn't seem necessary with the other changes that were being made.* |
| 2.01 | Clause 2.01 – Add the phrase "or deemed appointed" after "successor appointed" in line 1 to account for situations where an operator is immediately replaced. **(Company F)**<br><br>**Response:** *Modified to address the concern.* |
| 2.02A | (g) (i) - this subclause should end with the word "or" not "and". **(Company A)**<br><br>**Response:** *Modified to address the concern.* |

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| | Clause 2.02 – After the phrase "(or its managing partner" add the words "or one of its partners" (some partnerships, such as Company F, do not have a managing partner and many of our leases are registered in the name of Company F, being one of the partners). Also, add the phrase "or an affiliate of a trust if the Operator is a trust" immediately prior to the end bracket in line 1. **(Company F)**<br><br>**Response:** *Modified to address the concern.* |
| 2.02B | Clause 2.02 B (a) – add the phrase "except in a case where a challenge of Operator under clause 2.03 is already underway," at the beginning of this subclause. **(Company F)**<br><br>**Response:** *No. An active challenge doesn't preclude operation of the other removal processes.* |
| 2.03 | |
| 2.04 | |
| 2.05 | |
| 2.06A | |
| 2.06B | |
| 2.06C | Does successor Operator and the former Operator both have a vote in this process if: (a) they are already Parties to the Agreement; or (b) if they are a new Party to the Agreement? **(Company H)**<br><br>**Response:** *The disposed interest can only be voted once, by the recognized owner of the WI at the time. There is nothing in the provision that purports to address any WI already held by a successor Operator, such that it would remain eligible to vote its existing interest.*<br><br>*The provision addresses the WI being disposed of by the Operator during the period in which the Operator continues to represent the WI (i.e., before the binding date of the NOA).*<br><br>*Expanded an annotation on this to be more transparent about the existing Party scenario.* |
| 2.06D/E | Clause 2.06 E (a) – in the second line, after "2.02B" add "Clause 2.03". **(Company F)**<br><br>**Response:** *This timing is covered specifically in E(c).* |
| 2.07 | |
| 2.08 | In line 8, we believe that the successor operator should also be responsible for this audit. As an example in a three party agreement A has 35% and is operator being replaced, B holds 60% and is the successor operator and C at 5% is a non-operator; A and B agree to the replacement and C pays the bills? Additionally, in a two party agreement who pays? **(Company A)**<br><br>**Response:** *Modified to address the concern.* |
| 2.09 | |
| 3.01A | |
| 3.01B | |
| 3.01C | |

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| 3.02 | |
| 3.03A | |
| 3.03B | |
| 3.04 | Please review for consistency the provisions of 3.04, 4.01, 4.04 and elsewhere respecting the treatment of Parties, Operator and their respective Affiliates. Specifically, we suggest that the exclusion of Operator's liability and extraordinary damages in clauses 3.04 and 4.04 respectively should extend to its Affiliates, and we did not see a general provision that covered this. **(Company F)**<br><br>**Response:** *Modified Clause 4.04 to address the concern. We believe that Clauses 4.01 and 4.02 already otherwise address the concern.* |
| 3.05-General | |
| 3.05A | The "A." is missing at the beginning of the first clause. **(Company B)**<br><br>**Response:** *Modified.*<br><br>In addition, we recommend that the paragraph be written as follows for further clarity:<br><br>"(b) apply structured **<u>and documented</u>** HSE management ............. including: (1) internal processes to address the response to any emergency**<u>, (ii) internal processes to identify and minimize or address HSE risks,</u>** and **<u>(iii)</u>** work rules that ....... " **(Company B)**<br><br>**Response:** *Modified to address the concern.*<br><br>We recommend that a separate clause or reference be added to address the issue of **"Security"**.<br><br>"The Operator will take all reasonable actions to ensure assets are secure from harm, damage and theft." **(Company B)**<br><br>**Response:** *Modified A(b) to address the concern.* |
| 3.05B | |
| 3.05C | |
| 3.05D | |
| 3.05E | |
| 3.06 | |
| 3.07 | |
| 3.08 | Clauses 3.08 & 4.02 – For consistency with our comments under the definition of "Gross Negligence" above, add the phrase "act, omission, or failure to act". **(Company F)**<br><br>**Response:** *Modified to address the concern.* |
| 3.09 | |
| 3.10A/B | (B) We assume that a pooling notice to the lessor under a freehold lease would be included here. **(Company A)**<br><br>**Response:** *Modified to address the concern.* |

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| | Clause 3.10 A – In the annotations, if not in the body of the document, you may wish to point out the potential pitfalls of a situation where a title document to a block of land subject to a non-cross-conveyed pooling situation is inadvertently allowed to lapse or is terminated by an act, omission or failure to act by the Operator or a Title Administrator. **(Company F)**<br><br>**Response:** *Modified the annotations to address the concern.*<br><br>The phrase "working interest share of any encumbrance" does not necessarily work for all Agreements, specifically Pooling Agreements.<br>Recommendation: "except as otherwise provided in the Agreement" should be added at the end of the first sentence. **(Company H)**<br><br>**Response:** *If it is borne for the Joint Account, it should be in proportion to the Parties' WI. The problem arises when the responsibility is shared on another basis. Made a modification to address that with an annotation about at least NCC poolings.* |
| 3.10C | Perhaps it should be in a preamble that it is the intent of all parties to maximize the amount of land to be retained and under this clause lands that all parties agree on should be first selected. Any remaining rights to select should be allocated as per this clause. **(Company A)**<br><br>**Response:** *Modified to address the concern.* |
| 3.10D | |
| 3.10E | Amend wording to include commitments as follows: First sentence – "Insofar as any ***commitments, such as well commitments or work programs,*** or any payments other than annual rentals, such as continuation fees, extension fees or compensatory royalties, must be ***committed to or*** paid to the grantor of a Title Document by..." Also, if new wording is accepted ensure the annotation has been updated as it refers to "special payments" and this will need to be expanded to include drilling commitments. Rationale: In British Columbia there is some instances when drilling commitments are included as title document maintenance and we suggest this wording to clarify that title maintenance may not necessarily be financial. **(Company D)**<br><br>**Response:** *The situation is more complicated, as the Parties need to be presented with at least a vision of the contemplated work program before a forfeiture should be imposed. Even a participation election is contingent on being presented with an AFE or Operation Notice in due course.*<br><br>*We had prepared a new Subclause 3.10F to address this, but it was apparent from preliminary test feedback that there was a major difference in philosophy on this issue between those who wanted an "in or out" outcome in response to less than an Operation Notice quality proposal and those who wanted the normal Clause 10.10 process to apply.*<br><br>*We had modified Paragraph 7.01(b) and Subclause 10.03B and the associated annotations to provide greater flexibility to the Commencement period for Operations committed to under the Regulations as part of that possible revision, and have retained those changes.*<br><br>*We have expanded the annotations on Clause 10.10 to increase awareness of the issue and some of the key factors to consider if Parties are preparing a custom amendment to address it.*<br><br>*Parties in BC or Sask that need to make other work commitments should consider whether they need to address their needs on a custom basis, as noted in the annotations on Clause 10.10.* |

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| | **(ed note-Test clause referred to in preceding comment)**Clause 3.10 F – We appreciate the intent to deal with the B.C. work commitment issue. However, we have material reservations with this clause as currently drafted, particularly in its attempt to potentially create a forfeiture penalty on a party not concurring with something as poorly defined as the submission of a work commitment letter. Also, the way this clause is presently drafted it is unclear if the 30 day notice to the parties as is contemplated in Clause 3.10 F is binding or is it the actual Operation Notice? What if a party commits to the obligation in the 30 day notice but then elects to go penalty under the Operation Notice? What if parties are each proposing different types of work commitments i.e. seismic vs. drilling? Clause 3.10 F, line 13 contemplates "similar" work commitments. **(Company F)**<br><br>**Response:** *The Subclause in the May working draft about the potential for a B.C. lease continuation as a result of a "committed" work program has been deleted, as it was apparent that there was no consensus on how to address this potential issue. We have modified the annotations on Clause 10.10 to highlight this issue to users as an item they may wish to address in their B.C. agreements.*<br><br>*We have also modified the Commencement periods in Clauses 7.01 and 10.03 to provide greater flexibility for Parties facing this issue.*<br><br>**(ed note-Test clause referred to in preceding comment)**We discussed how best to handle the B.C. Work Commitment issue, and felt that it was best handled as a Title Forfeiture situation. In the event that a partner declined to participate in the first Work Commitment Program (presumably for technical reasons), that they could propose a Subsequent Work Commitment program that would be akin to a Subsequent Title Preserving Well. I would suggest moving Work Commitment Programs from Article 3.10(F) to Articles 10.10 B & C. **(Company G)**<br><br>**Response:** *The provision has been deleted based on the major differences in philosophy that were apparent when the provision was presented for consideration.* |
| 3.11A | |
| 3.11B | |
| 3.11C Alt.(a) | |
| 3.11C Alt.(b) | |
| 3.11D/E | D(d)Amend as follows: Fifth sentence (iii) the insurer will ***endeavor*** to provide the Operator with ***30*** days' written notice . . .Rationale: Upon consultation with our insurance group, we are suggesting this change to align with standard industry practice of 30 days for a notice of cancellation. **(Company D)**<br><br>**Response:** *Modified to address the concern.* |
| 3.11F-H | |
| 3.12 | |
| 3.13 | |
| 3.14 | |
| 3.15 | |

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| Other/Extra 3.00 | |
| 4.00-General | |
| 4.01 | **(4.01 and 4.02)** We reiterate our position that Operator should only be liable for Losses and Liabilities directly resulting from Gross Negligence or Wilful Misconduct, and be indemnified otherwise. Breach of contract (even with 3.04 and 3.05A excluded) should not be singled out nor treated differently. The rationale is that a) an Operator does not profit from its role as Operator, and b) an Operator has a significant interest in the joint venture and usually has the most to lose (due to its interest) even when charged to the joint account. Therefore it is fair that an Operator neither gain a profit nor suffer a loss as a result of being the Operator, as long as it is not acting in a manner constituting Gross Negligence or Wilful Misconduct. **(Company B)**<br><br>**Response:** *Based on the feedback from one of the industry presentations in December, we have modified the document to extend the 3.04 type protection to the maintenance of the Title Documents under Clause 3.10. This was done mostly to provide the Operator with greater protection in managing freehold leases, given that a freehold lease may be lost because of suspension of a well.*<br><br>*Our response to a similar comment from your company on the 2005 draft is repeated here for context:*<br><br>*We believe that the requirements in Clause 3.04 and Subclause 3.05A to limit the Operator's responsibility thereunder to the Operator's Gross Negligence or Wilful Misconduct provide an Operator with greater protection than they have under the 1990 and prior versions of the Operating Procedure with respect to overall operational performance. This is because there is nothing in the pre-1990 documents that precludes someone from suing an Operator in contract for failure to satisfy the good oilfield practice requirement, even though the Operator's conduct did not meet the Article IV gross negligence or wilful misconduct test. Although we attempted to prevent this result in the 1990 document, it is not clear after the post 1990 cases if our attempt was sufficient to prevent this result.*<br><br>*Where we do agree is that an Operator should not be open to liability in contract for breach of that type of obligation in circumstances in which the Operator's performance did not meet the Gross Negligence or Wilful Misconduct test. We believe that the modifications in Clause 3.04 and Subclause 3.05A of this document basically insulate an Operator from claims for breach of contract and negligence under those provisions for its operational performance, such that an Operator is far better off with this document than it is under any of the prior versions of the document.*<br><br>*With the operational obligations in Clause 3.04 and Subclause 3.05A out of the equation, the philosophic difference is in the handling of the Operator's other specific contractual requirements. From a practical perspective, these generally relate to such matters as duties under the Accounting Procedure, the management of Joint Account funds and the maintenance of the Title Documents. The common elements of the remaining provisions tend to be that the Operator is not making real time operational decisions and that a mistake will not put people, property or the environment at risk.*<br><br>*In this regard, the only thing that we've done in this area is to recognize that there is nothing in Article 4.00 that provides the Operator with a full exemption from the normal legal liability for breach of contract for all breaches of contract other than Clauses 3.04 and 3.05.* |

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| | *For items like breaches of the Accounting Procedure, misappropriation of funds ~~and loss of the Title Documents~~* **<edited out because of update to current draft>***, we believe that the Operator is actually in no different position under the draft than it is under any prior version of the Operating Procedure. We believe that the case law and industry support our view that an Operator should not be permitted to try to use the Gross Negligence test as a shield with respect to those types of breaches.*<br><br>*One of the things I'd done at various industry presentations to over 450 personnel at different events between November and January was to walk through the general liability regime, the responsibility for operational breaches and for such other breaches as the Accounting Procedure and misappropriation of funds and ask for audience feedback about the appropriateness of our proposed handling. The reaction was overwhelmingly in agreement with our view that Operators required greater protection against "operational breaches", but that Gross Negligence or Wilful Misconduct was not a necessary condition in all cases for imposition of the normal breach of contract remedies against an Operator.*<br><br>*The net effect of our provision is that we believe that we are aligned with you with respect to responsibility for operational performance and maintenance of the Title Documents, which are the areas with the greatest potential for significant loss. We are misaligned on potential liability for other obligations, such as misappropriation of funds, failure to carry required insurance policies and failure to comply with the Accounting Procedure, where we believe that the outcomes in the document are consistent with those in all other versions of the CAPL Operating Procedure.*<br><br>*Overall, we believe that the modifications to the entire liability and indemnity regime in the document provide an Operator with much greater protection than under any prior version of the Operating Procedure and that our proposed handling of this issue is consistent with the law in Canada (<u>Erehwon</u> and <u>Morrison</u>).*<br><br>*While we appreciate that the handling in CAPL is different from the blanket protections granted to an Operator under the AIPN form of agreement, the broadness of the protection granted to an Operator under Article 4.6 of that document has been the subject of some concern in legal circles (i.e., Sean Murphy's AAPL article).*<br><br><u>Environmental Damage:</u> We reiterate our position that an Operator should never have to bear any environmental loss, except as a party to the extent of its interest. **(Company B)**<br><br>**Response:** *The Extraordinary Damages definition in the 2003 draft had included a general exemption for Extraordinary Damages, but several large companies objected strongly to it. As a result, we modified the exemption to limit responsibility for losses and liabilities resulting from loss of well control during drilling or other well Operations.*<br><br>*Our response to a similar comment from your company on the 2005 draft is repeated here for context:*<br><br>*Ultimately, the modification to this reference was due to the strong negative feedback of some other large companies on the provision in the previous draft. The feedback from major companies was polarized, such that handling in your preferred way would see an equally strong negative reaction from other large companies. Our overall conclusion is that their position is more representative of industry's pulse at this time.*<br><br>*The modification in the draft (item (ii)) was designed to try to address their concerns in a way that provided an Operator with real protection on the types of* |

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| | *Environmental Loss for which there was the greatest likelihood of significant loss in conventional WCSB operations-those associated with loss of well control.*<br><br>*In practice, we believe that (ii) provides you with most of the protection you request, although it does not go as far as your preferred approach.*<br><br>*For context, it is important to recognize that the handling of Extraordinary Damages in this document still provides an Operator with much greater protection than all of the previous versions of the document. Insofar as any Operator has the protection you note with respect to environmental loss, it is because they have made a custom modification to give them this protection. While we have seen this type of protection included in international and frontier agreements, we are not aware of this type of provision being used with any frequency for conventional WCSB land agreements.*<br><br>*The limitation to well operations is narrower than your company would typically use in Canadian frontier operations or international operations using documents more similar to the 2002 AIPN form. However, it is important to recall that the scope of the activities under those agreements (and the associated risk) is drastically different than those actually faced in a conventional WCSB land agreement.*<br><br>*There are enormous potential risks associated with handling produced volumes in an offshore environment. Similarly, the nature of a frontier type project is that the Operator could see itself operating major project specific infrastructure such as a purpose built gas plant and regional gathering system, where that type of infrastructure would typically be outside the scope of our document. (See, for example, the narrow definition of Production Facility, which excludes by definition all gas plants and all gathering systems designed to handle any outside substances.)*<br><br>*As noted in the annotations, we do not necessarily disagree with the exclusion of the broader reference you suggest for those operating environments or perhaps for operation of a major sour gas gathering system or plant.*<br><br>*It is implicit in your comment that there is a concern that an Operator would necessarily be exposed to incremental liability because the exclusion is not as broad as you would prefer.*<br><br>*There are two problems with equating our decision not to include the broad exclusion for environmental loss with greater Operator liability.*<br><br>*The first is that there is nothing to prevent an Operator from arguing that the particular damages fall within the more generic “consequential damages” type exception in (i), even if the test in (ii) is not met.*<br><br>*The second is that the onus always remains on a plaintiff to prove its damages at law insofar as the particular damages in question do not fall within the generic exception in (i). The legal doctrines of causation, foreseeability and remoteness limit greatly the ability of a Court to award any such damages at law.*<br><br>*The annotations have been expanded to provide greater context on these items.*<br><br>*As stated in the annotations and as noted in the Comment Matrix on the 2003 draft, any Operator that is dissatisfied with the handling in the document remains free to address its residual concern with a custom modification in its agreements.*<br><br>*We are not prepared to make the requested modification to the provision for the reasons noted above. We have, however, modified the definition by including “, including, for this item (ii), associated Environmental Liabilities” at the end of (ii) and by expanding* |

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| | *annotation (iii) on the definition somewhat to reinforce that complex product handling infrastructure is unlikely to be managed under the Operating Procedure.*<br><br>*It is also clear from the annotations that we agree that there are circumstances in which an Operator should seek better protection than provided by the Operating Procedure, particularly when managing major sour gas infrastructure under a CO&O Agreement.* |
| 4.02 | Clauses 3.08 & 4.02 – For consistency with our comments under the definition of "Gross Negligence" above, add the phrase "act, omission, or failure to act". **(Company F)**<br><br>**Response:** *Modified to address the concern.* |
| 4.03 | |
| 4.04 | Please review for consistency the provisions of 3.04, 4.01, 4.04 and elsewhere respecting the treatment of Parties, Operator and their respective Affiliates. Specifically, we suggest that the exclusion of Operator's liability and extraordinary damages in clauses 3.04 and 4.04 respectively should extend to its Affiliates, and we did not see a general provision that covered this. **(Company F)**<br><br>**Response:** *Modified Clause 4.04 to address the concern. We believe that Clauses 4.01 and 4.02 already otherwise address the concern.*<br><br>Clause 4.04 – see our affiliate comment earlier and we also ask that this exclusion be made comprehensive including agents, contractors, officers, etc. **(Company F)**<br><br>**Response:** *Modified to address the concern for Affiliates, etc., but not contractors and other agents. They are providing their services on a for profit basis under which there should be a contract that outlines liability and indemnification and insurance obligations.* |
| 5.01 | The final comment came from Z in our Audit Team, and is the result of issues she has encountered with audits. I have attached a summary prepared by Z that sets out those charges that can be made to AFEs "With Owner Approval". The philosophy of PASC is that it contemplates a line item approval of items such as 'engineering & design', whereas CAPL contemplates a project approval. Some companies are better than others about identifying some of these specific charges in the AFEs, and others are more vague. To keep these two documents working in tandem, is it possible to revise Article 5.01 to confirm that approval of an AFE is an approval of the project, and notwithstanding the terms of the Accounting Procedure, that the Operator is not required to obtain approval from the partners for each specific line item in the AFE.<br><br>I've also suggested to Z that PASC may need to revise some of the wording in PASC to mitigate audit issues. **(Company G)**<br><br>**Response:** *We believe that this is ultimately an issue for PASC to consider and to address and that it would be inappropriate for CAPL to include outcomes in the Operating Procedure that are designed to override the requirements of the PASC Accounting Procedure without broad PASC support. This is particularly the case when this is an issue that should also be discussed with the PJVA.*<br><br>*Unfortunately, this concern was presented to us at the end of May (several weeks before the scheduled finalization of the Operating Procedure). This timing was such that it was not feasible to have the coordinated discussion with PASC and the PJVA that would be required for the Operating Procedure to address this issue optimally, in a way that suitably considered and addressed the needs of stakeholders.*<br><br>*That being said, we offer some general observations on the issue that will be shared with PASC.*<br><br>*The first is that it is important for any party trying to obtain approval of charges that do* |

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| | *not fall within the direct charge capability of PASC to be transparent about that intention. A proposing party should never be rewarded for presenting information that is misleading and then being able to rely on approval as approval of the charge that was presented in a misleading manner.*<br><br>*The second, assuming the proposing party has been transparent about its intention, is that the required approvals should be regarded as having been obtained if all parties are willing to conduct the operation and all (or at least those with WI meeting the PASC approvals requirement) have no particular objection to the particular charge.*<br><br>*The third is that any mechanism to address this issue should not provide the proposing party with a "loaded gun". A proposing party should not in any circumstances be permitted to present the other parties with a take it or leave it approval where they are threatened with the application of the non-participation penalty if they dare to object to the extension of the charge capability under the Accounting Procedure.*<br><br>*The fourth is that any mechanism to address this issue should not allow a party to do indirectly what it can't do directly for those parties that elect not to participate in the operation. A proposing party should not be permitted to load up an AFE with indirect charges and then have a blanket authority to drop them into the penalty account relative to a non-participating party.*<br><br>*We understand, though, that PASC is modifying its draft Accounting Procedure to address this issue. We have added a "subject to" reference to Subclauses 3.01B and C to ensure alignment with whatever the final outcome may be following the industry comment process on that document.* |
| 5.02 | We note that there is no provision for charging a one month or two month operating advance. Has this been intentionally dropped? We felt that this would be a good clause for the Operator to have. **(Company B)**<br><br>**Response:** *The "operating fund" process is addressed in the PASC Accounting Procedure. See, for example, Clause 105 of the 1996 PASC Accounting Procedure.* |
| 5.03 | Clause 5.03 A - Subject to further detailed review with our operating and accounting groups, we prefer that Subclause A not be made optional, since its use is already at the Operator's discretion. **(Company F)**<br><br>**Response:** *Survey data on the optional possibility was almost evenly split. The status quo approach will be retained.*<br><br>(A) We like the Subclause in its present form. Parties should be able to request advances regardless of the amount, therefore, we don't want a minimum forecast. **(Company C)**<br><br>**Response:** *See previous Response.*<br><br>(A) Please incorporate the suggested election. **(Company A)**<br><br>**Response:** *See previous Response.*<br><br>(B) We find the wording confusing and recommend that it should be made clearer that at no time should the Operator have more than 2 months of advanced costs. **(Company B)**<br><br>**Response:** *Modified to address concern.*<br><br>C-We don't believe parties will use the dispute resolution process in order to conduct joint operations, as it will take too long. If the operator believes the operation is valid, |

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| | they will generally front the money themselves rather than going down the dispute resolution process. Therefore, we would like to delete subclauses (b), (c) and (d). **(Company C)**<br><br>**Response:** *Paragraphs (b), (c) and (d) are designed to try to balance the expectations of Operators and Non-Operators. It has become a common practice to request 100% funding from Non-Operators whose financial viability is unquestioned. These Paragraphs are included mostly because of the use of the provision by some Operators to obtain interest free loans from Non-Operators for the period between project approval and payment of suppliers, where the deletion of these Paragraphs would do nothing to limit these types of requests.*<br><br>*At the same time, we recognize that there are clearly circumstances in which an Operator must receive protection. An Operator has a clear ability to secure performance for Parties meeting the prescribed criterion of insolvency, bankruptcy or being served a default notice in the preceding six months.*<br><br>*A Party not meeting any of those criterion has the ability to challenge the Operator's assertion under (a) that the Party may be unable to pay costs owing by it as and when due hereunder and to have the normal JV billing process apply during the period that the matter is in dispute. (Modified (c) slightly and added an annotation to make this more transparent.)*<br><br>*As noted in the annotations, the net impact of the dispute resolution mechanism is to reduce drastically the requests currently being submitted to large, financially viable companies for payment of 100% of their costs of an approved operation immediately after approval.* |
| 5.04 | |
| 5.05-General | **<ed note: The nature of this commenting company's comment about the default remedies is that Responses are added at various points in the comment, with an overall Response at the end.>**I can tell you from practical experience that the clause below is a disaster waiting to happen. In essence, we have recently been through an attempted seizure and these clauses are not in accordance with the law in general and these clauses can clearly be abused. The clauses go far beyond what a lien is intended to accomplish and journey into the realm of kangaroo justice – normal judicial process is bypassed. It is remarkable that these problems have not been addressed more comprehensively in the past.<br><br>In the example at hand it was not disputed that monies were owed. The real issue boiled down to how much. Significant issues included:<br><br>a. unused cash call amounts that were outstanding<br>b. the inclusion of afe amounts in the notice that had not even been sent much less signed. Some of these wells relate to lands to which a CAPL agreement had not been put into effect.<br>c. there were unpaid amounts owing by the operator to the non operator<br>d. the operator had failed to pay GORRs for over six months<br>e. there were amounts in the "default" notice that related to plant expenditures that are not part of CAPL<br>f. the operator would not provide data to make subsequent decisions.<br><br>Needless to say the operator initially disputed items d and e, although these were later admitted. Eventually the operator was forced to admit that its claims were at least 50 percent higher than they should have been. And the matter is not yet closed. Payment was made when the difference between disputed amounts was reduced to a tolerable level. |

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| | We had some real accounting problems. First, the company had not provided estimates of capital expenditures and when they would occur. Second we had a lot of problems with what AFEs were being included. There were actually several rounds of notices. Then there were disputes as to where the payments were to be directed i.e. which wells and operations.<br><br>The operator then went ahead and tried to seize revenue that was not rightfully theirs. The clauses below rely on the assumption that the operator is operating in good faith. I would suggest that this is not necessarily the case and should not be allowed to occur unfettered. An indemnity is therefore not the least bit appropriate. Had the company successfully implemented the lien, then the non-operator may have been sufficiently damaged financially that they could have gone under. The operator would have gained as a potential fire-sale purchaser.<br><br>It is unlikely that the Courts would absolve the operator of not acting in good faith or tolerated the errors that existed.<br><br>There are some other implications to this as well. Companies have gas contracts for their production and there can be some big liabilities if prices are changing and the seizure was wrong. Royalties must also be paid by the working interest owners. So, if the "operator" seizes the revenue, who gets left holding the bag for paying the royalties? The agreement, as it stands below, puts the operator ahead of the government. This is guaranteed to cause problems. There are usually agreements for processing and transportation as well. Should the operator be able to walk around these contractual arrangements or should they really be honoured?<br><br>The situation gets more complicated when the WI owner is taking in kind and does not agree with the notice, how is this enforced? If the operator is doing the marketing the matter is easily enforced. However, what if the WI owner doesn't agree? In the case at hand the gas marketer was sent a notice to divert funds. This was not successful. The operator then attempted to have the production accounting allocations changed. The implication of this is, if the seizure was wrongful, then both the operator and plant operator (who did the allocation but was not part of the CAPL agreement) would be jointly and severally liable. Note that there was a PJVA agreement in place. Should the production information be withheld in accordance with 505 B. (b)? This gives them a license to withhold revenue unchecked. What if the operator's contract wasn't as good as the WI owner? Should the company receiving the gas get stiffed and then the WI paid less? This creates as many problems as it solves.<br><br>One other issue that arose is should amounts owing between companies be ring fenced to agreements / areas / or should this apply to all relationships between the companies?<br><br>It would seem from the tone of the agreement and clause 503 C (a) indicate that the financial viability of companies is a concern. The government has this issue all the time. However, they are constrained in that there is no presumption of lack of capacity permitted in our legal system. I would suggest this clause will also cause problems. (**Response:** *The 1990 provision is routinely abused by Operators that request a 100% contribution of costs from companies whose financial viability is not in question. This Subclause allows a Non-Operator to dispute the request for security of payment and defer the obligation to comply with the request for security of payment until the application of the dispute resolution process. To protect the Operator, a company may not avail itself of the right to use the dispute resolution process if it is subject to debtor relief protection or it has recently been subject to a bona fide default notice. The modifications have been designed to provide the Operator with the protections intended under the original provision with much greater protection for financially viable parties that are fulfilling their obligations.)* |

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| | Sadly, the right to audit does little to prevent the exercise of the notice of default remedies. The current agreements say the operators records are prima facie evidence. Even when the operators records are obviously in error. This needs to be fixed. Audits are great after the fact and to ferret out "sneaky tricks". (**Response:** *See the comment about the pending PASC document in the Overall Response below.*)<br><br>This document goes far beyond the intent of a lien. Referring to Black's law dictionary:<br><br>Lien: a legal right or interest that a creditor has in another's property, lasting usually until a debt or duty it secures is satisfied. Typically the creditor does not take possession of the property on which the lien has been obtained.<br><br>Most liens do not require funds in possession of the creditor to be transferred to the debtor.<br><br>To put some more context to this, registering a lien does not determine the amount to be owed. This is the responsibility of the Courts. It does usually say of $x funds are paid the lien is released. The reason for this is obvious. There is no need, in fact, it would be undesirable, if creditors are taking possession of things or seizing items via force to satisfy payments. This is the role of judges and sheriffs.<br><br>The possession in 505 B (g) (i) seems extremely oppressive. To put this in other terms we had two operators who failed to pay their joint venture accounts. One went CCAA and the other sold their interests. Because of this we were left cash short for some short periods of time. So, if a company defaults for a short period do you want the Operator making decisions that are to the Operators benefit at the expense of the company? (**Response:** *An Operator cannot resort to the seizure and sale remedy until at least 60 days after issuance of a default notice (an increase of 30 days in this document), where default notices tend not to be issued immediately following the commencement of the default. Given the protections in the provision and the court order validation step, it is very unlikely that any party with a short term problem would find itself subject to the application of that remedy.)*<br><br>Our company has also been in the position where one of our WI partners did not sign some AFEs. Now we were at fault to the extent that we did not send independent operation notices. However, it was clear to us that the individuals used the situation to their advantage. A little scouting allowed them to make a lot of decisions after the risk had been take. Some of this was quite bold. They had asked for (and received) some production data. Some step needs to be taken to prevent this kind of abuse. (**Response:** *We can't say on the one hand that the Operator can only bill for authorized amounts and then create a negative consequence for not paying expenditures that aren't authorized. It is not feasible for the document to try to address this latter type of problem given the large number of potential fact situations and permutations.*)<br><br>So the objectives of this clause should be greatly simplified:<br><br>• Establish the precedence of payment for the operator<br>• There needs to be some process, i.e. a notice and response time. (**Response:** *A default notice must be compliant with the notice requirements of Article 22.00 of the document (i.e., sent to the designated address for service).*)<br>• The notice needs to be properly constructed and in accordance with other CAPL provisions<br>• There should be a provision for retention of funds held, but no seizure. Why not make use of existing legislation such as a registration of personal property? (**Response:** *The registration system addresses personal property. There is no* |

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| | *comparable system to protect claims respecting Crown mineral rights.)*<br>• I think some process for resolving these difficulties would be appropriate.<br><br>To some extent the PJVA agreement provides some useful guidance. **<ed note-Quotes PJVA CO&O default provision. Goes on to make specific comments on draft, as noted in the bullets below. Also suggested total rewrite of the provision, as presented at the end of the Comment Matrix. Responses to the bullet points are noted below after the bullets, with an overall Response presented after that.>**<br><br>• 5.05A: I don't think this is the least bit realistic. We have had a WI partner recently enter CCAA. The other implication of this is that a joint interest property could not be used as security for a bank loan. **Response:** *All provisions of the document are subject to the Regulations as per Clause 1.04. Two of the outcomes of that are that secured creditors have priority over unsecured creditors and companies under debtor relief protection have the protection granted to them under that process. Modified Subclause A and the annotations to make this more transparent. Added a reference to be clearer that the provision does not preclude pledges or security granted under bona fide financings.*<br><br>• First Sentence 5.05B: Since I have seen this not happen I think this is totally unrealistic. There are not consequences if the one of the parties is not acting in good faith. **Response:** *For context, the first sentence was not included in prior versions of the Operating Procedure. The remedies are ultimately probably very similar, though. Modified the annotation to reiterate the potential impact on an Operator that purports to apply the default remedies without there actually being a default (i.e., potential replacement as Operator for default under Subclause 2.02B, potential claim for breach of contract, potential imposition of injunctive relief, potential negative impact on reputation because of legal proceedings and word of mouth).*<br><br>• 5.05B(b): So if a company pays their share of drilling they must make subsequent decisions without the benefit of information **Response:** *A default is a default. Assuming that a Non-Operator owes money that it is not paying, an Operator can stop the information flow on a well. Including process changes that link payments to specific operations and denying the Operator the ability to exercise leverage with those activities to recover funds compromises the Operator. Based on the feedback received generally over the entire process and our experience with these agreements, this would generally not be well received.*<br><br>• 5.05B(f): Has CAPL considered how this might be abused? Suppose one was able to put a company on notice – when key executives were away. With only 5 days might this be used to "lock out" other parties? **Response:** *For context, the notice period for use of this remedy is 5 Business Days, which is more than a week of elapsed time. It also requires the party to be in default for 30 days following issuance of a default notice, where default notices tend not to be issued immediately upon an invoice not being paid on time. The reality is that a party in this situation has been in default for some time.*<br><br>*Given that properties are managed on an ongoing basis, it is imperative for each company to have processes in place to allow its interests to be managed during the period key personnel are absent. Although parties often try to be sensitive to a party's logistical issues in practice, this is ultimately the party's problem to manage, not the other parties' problem to accommodate.*<br><br>• 5.05B(g): From a legal perspective there is absolutely no process or "checks" on the operator. This is a complete abrogation of due process of law. **Response:** *The 1990 document introduced a number of process safeguards that were missing from prior versions of the document. We don't agree with the comment about "complete abrogation of due process of law". The requirement in this document to obtain a court order before effecting a disposition under this Paragraph is a fundamental change from prior versions of the document that recognizes that the remedy is only effective when the court says it is..* |

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| | *As this goes to the foundation of the remedy and might be overlooked by users in their initial review, we have shifted the reference from the end of (iii) to the beginning of the provision. This reiterates the requirement for a court to validate any contemplated sale of the interest.*<br><br>*We have also modified the annotation to note the likelihood that this requirement probably already exists under prior versions of the document because of the* <u>*Novalta*</u> *case.*<br><br>• 5.05F: Again totally unworkable. **Response:** *Modified the provision slightly to address expressly the expectation that the records are bona fide records.*<br><br>**(Company I)**<br><br>**Overall Response:** *For context, the suggested rewrite would involve fundamental changes to the provision that would have required detailed dialogue with industry, PJVA and PASC if we wished to implement changes of that magnitude. The comments were also delivered to us shortly after the CAPL Board had endorsed the document, subject to an authorization to complete our final editing process to address any finetuning type items. The nature of your proposed changes was outside our authorization, such that we would have needed to seek approval of the CAPL Board to make the suggested changes.*<br><br>*Notwithstanding those barriers, we generally did not agree with the inclusion of the suggested major changes to the provision.*<br><br>*While we recognize that there may be some abuse by Operators in isolated cases and we continue to make adjustments to mitigate the potential for abuse, one would expect that industry would at some point over the 4 year commenting process on the 2007 document (and the 17 year period that the 1990 provision was in place) have made a big deal about this if the enumerated types of Operator abuse were common.*<br><br>*Although the level of protection offered to Non-Operators in your suggested provision would give a Non-Operator a much better outcome in your particular instance, we believe that a provision with the layers of suggested protections and time frames would invite gaming by the Non-Operators. We would fully expect to see distressed Non-Operators routinely abuse the suggested provision, such that all Operators would be at serious risk of being compromised in their ability to recover amounts owing to them.*<br><br>*We struggle with creating this as a foreseeable outcome.*<br><br>*Based on the overall tone of feedback over the course of the entire project, any changes designed to compromise the expectations of Operators results in strong negative feedback. Making a change of this magnitude is a line in the sand type change that potentially goes to the willingness of our industry to accept the document.*<br><br>*Generally, we are very cautious about responding to what appears to be a unique experience with a fundamental change to the document, particularly where the potential implications are profound. This is because it is easy to create an untested solution that ultimately proves to be worse than the problem.*<br><br>*Although we agree to disagree on the degree to which fundamental change is required, the foundation of the concern is over the ability to challenge billings under the Accounting Procedure for charges that clearly have not been authorized.*<br><br>*We have identified to our PASC liaisons that PASC should review its traditional Subclause 107(a) to see whether modifications are required to protect Non-Operators against the obvious abuse case. As the second draft of the PASC Accounting Procedure will be issued to industry in the not so distant future, we believe that you should ensure that your company reviews that document and offers your feedback on that document.*<br><br>*As noted in the other Responses to the comment, we have made some modifications to* |

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| | *the document and the related annotations as part of our final editing process to make the outcomes more transparent and to reiterate some of the expectations inherent in the document. Although these changes do not go as far as you would like, they further mitigate the potential for abuse of the provision by Operators, where participation in the commenting process on the PASC document can mitigate risks in this area further. The document is better as a result of your feedback.* |
| 5.05A | |
| 5.05B(a)-(d) | What is the mechanism if the non-payment is due to a bona fide dispute as the amount is due? There should be some wording added to clause 5.05 (B) (Default Remedies), which would prohibit an Operator from enforcing a remedy upon a party who has a bona fide dispute as to such non payment and has initiated a dispute resolution procedure for such issue under Article 21 or which issue is subject to litigation between the Parties. Even some of the gentler default remedies may have the unwanted effect of forcing a party to unwillingly settle the dispute or litigation. **(Company A)**<br><br>**Response:** *We have modified the introduction to Subclause B and the associated annotations somewhat to express the Parties' general intention and to provide a Non-Operator with some incremental protection where the charges are not being made in good faith.*<br><br>*We have not gone as far as suggested, though, as we are concerned that this could potentially invite abuse by Non-Operators and compromise Operators.*<br><br>*Subclause 107(a) of the PASC Accounting Procedure only provides the right to pay less than the amount owing if the Operator agrees that the Non-Operator may withhold payment until the matter is resolved.*<br><br>*The traditional PASC provision presumably reflects a policy view that the Operator's billings are regarded as prima facie correct and that a concerned Non-Operator has appropriate rights through the audit processes to effect an adjustment in due course.*<br><br>*The ability to remove an Operator without cause in Subclause 2.02B of the document (and the corresponding provision in the 1990 document) also provide Non-Operators with a strong practical remedy if the Operator is abusing its position.*<br><br>**(ed note-Addition in May working draft resulting from preceding comment)**Clause 5.05 B – Please delete the new first sentence as we believe that it may unduly restrict the remedies available against a defaulting party. **(Company F)**<br><br>**Response:** *This sentence was included because of instances in which a company without any valid charge purported to apply the remedy. We included the sentence as a motherhood reminder of the vision for the Clause. It is difficult to see how the sentence would adversely impact an Operator that is conducting itself in a bona fide manner.* |
| 5.05B(e)-(g) | (g), last paragraph, first sentence – Remove one "to that". <ed note: Last paragraph of B> **(Company C)**<br><br>**Response:** *Modified.*<br><br>(B)-Proviso, Annotations, Page 21 – Believe it should say "The harsher seizure remedy (B(g) …" rather than "The harsher seizure remedy (B(f) …" **(Company C)**<br><br>**Response:** *Modified.*<br><br>(g) We believe 60 days is too long in order to enforce this option. We believe 30 days would be more appropriate. **(Company C)** |

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| | **Response:** *The seizure and sale remedy is an exceptional remedy that would only be used in extreme cases.*<br><br>*A Party that believes that it may ultimately use this remedy should issue its default notice soon after the default is apparent.*<br><br>*This does two things.*<br><br>*The first is that it positions it to apply the remedy at the earliest possible date.*<br><br>*The second is that we potentially see default notices issued much earlier in the process than is currently the case.*<br><br>*Given that the primary objective of the default provision is to get paid (versus implementing default remedies), increased vigilance in the issuance of default notices is probably a good thing. This is because it escalates the visibility of the issue and its implications to all of the Parties (and potentially to different levels within organizations) and increases the likelihood that the default will be corrected before the seizure remedy is effected.*<br><br>*Modified the annotation on Paragraph (g) and the proviso on Subclause B somewhat.* |
| 5.05C-E | |
| 5.05F-H | |
| 5.06 | |
| 5.07 | |
| 6.00-General | |
| 6.01 | **(ed note-Comment is on a change that was in the May working draft.)**Clause 6.01 B should have the words “no more than 31 days” before the word “notice” on the third line. This would then be consistent with the approach taken in Clause 6.02 B. Clause 6.02 B should then be entitled “Consent for Sales, Processing or Transportation Exceeding 31 Days” and the words “, processing contract or transportation contract” could be added after the words “sales contract” on the second line of that clause. **(Company F)**<br><br>**Response:** *The provision is very restrictive. There is only an ability to contract for these services for the Joint Account if there is a fee for use that allows for termination without any consequence. An Operator that has a different vision for committing to infrastructure is required to obtain owner approval.* |
| 6.02 | |
| 6.03 | |
| 6.04 | We believe that this Clause should have blanks for the rates (with an attached annotation indicating the CAPL suggested rates) in order to allow each party to negotiate its own rates in the clause. We note that the rates currently existing in clause 6.04 are not acceptable to us and we would prefer to place higher rates which would encourage a Non-Taking Party to either start disposing of their own production or enter into a formal contract with the operator that would provide some certainty as to the continued availability of that production and formalize any negotiated marketing fee.<br><br>With respect to Sulphur, we feel that the reference fee is far too low especially if the Non - Taking Party's sulphur is poured to block and the 'taking' party holds title to the sulphur |

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| | block. The $1.00/tonne fee is just too low of a minimum to encourage owner's with small volumes of sulphur to do anything other than leave it with the taking party to move/handle. Furthermore, given the prices we can expect to see for sulphur over the next couple of years it would provide an operator with very little compensation for taking care of what could be the Non - Taking Party's 'problem' of keeping this product moving to market. **(Company A)**<br><br>**Response:** *(i) We had provided this flexibility in the 1990 document, and our understanding is that very few parties availed themselves of the optionality offered in that provision. We agree with your assertion that Parties will often prefer to override this rate for the reasons you note, and have modified the annotation to make this more transparent. The inclusion of the annotation also facilitates the ability of users to make custom modifications, as the annotation is an external validation of your approach.*<br><br>*(ii) Other feedback we received on the previous draft is that the logistics of sulphur handling were that some Operators actually preferred that Non-Operators didn't take the product in kind.*<br><br>*Again, your company is free to override the document rate in your election sheet.* |
| 6.05 | |
| 6.06 | |
| 6.07 | |
| 6.08 | |
| 7.01 | See comments above related to the relationship between the provisions of this article and the definition of "Commenced". **(Company F)**<br><br>**Response:** *See comments on the definition of Commenced.*<br><br>Clause 7.01 – you may wish to deal with accrued expenditures as these can sometimes be substantial prior to the spud date. This also relates to our "pre-drill studies" comment earlier. **(Company F)**<br><br>**Response:** *See comments on the definition of Commenced.*<br><br>**Clause 7.01(c) –** In the last sentence, it is confusing if all parties have to elect to participate, or just make an election.<br>Recommendation: Replace "elect to participate" with "make an election".**(Company H)**<br><br>**Response:** *Adjusted the last sentence somewhat to be more transparent that the Operation Notice is the applicable approval vehicle if all Parties approve and the same Operation as described in the AFE is being conducted for the Joint Account.* |
| 7.02 | |
| 7.03 | Clause 7.03 – you could consider making an exception in the opening two lines for wells that are drilled as core holes or for injection purposes. **(Company F)**<br><br>**Response:** *Modified to address the concern.* |
| 7.04 | |
| 7.05 | |
| 7.06 | |
| 7.07 | |

| PROVISION | COMMENTS |
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| 8.00-General | Further to a request by Jim MacLean, Company D reviewed this Article and has no comments to provide. **(Company D)**<br><br>**Response:** *N/A.*<br><br>Article 8.02B states that the bottom hole coordinates for a HZ well must be within 75 m, and Company G felt that this should be larger. i.e. 100m of bottom hole coordinates. **(Company G)**<br><br>**Response:** *We had included a 100m variance in the 2003 draft that was in a different format and received very negative feedback on the degree to which the provision was biased in favour of the proponent of the Operation. We considered the request and decided against making the change because of a combination of the critical mass of negative feedback we had previously received and the flexibility within the current provision for an Operator to obtain approval of greater flexibility as part of the approval process with the other owners.*<br><br>*We have expanded the annotation to reinforce this, while noting that the ability of any particular Operator to obtain this flexibility will be on a case by case basis and a function of such factors as: (i) the nature of the project; (ii) the nature of the discretion being requested; (iii) the potential cost variance; (iv) the Operator's technical performance; and (v) the Operator's previous willingness to work collaboratively with its Non-Operators.*<br><br>*It's also important to keep in mind that we're trying to attain a lowest common denominator solution, where certain companies will want more complex provisions to address their particular operating experiences. It simply isn't feasible for us to try to write a provision for the "operator" companies with a stronger technical expertise in this area where the foreseeable outcome is the inclusion of a big red flag for the broader audience that would compromise use of the document in the broader population.*<br><br>*See also the annotations in the Addendum at the end of the document.*<br><br>**(Ed note-Series of comments by Company C. Responses are presented in each section)** There will be a lot of discussion about this clause if it is put into CAPL. Undoubtedly there will be many occurrences where 'issues' will occur.<br><br>**Response:** *Think that would be the case no matter what we put in, as fact situations don't necessarily lend themselves to one size fits all solutions.*<br><br>1. Company A puts Company B on notice to drill a Hz well 1400 meters in length. Company B does not participate, as it thinks the pool doesn't extend that far, and so the costs Company A quotes are much too high. Company A drills, this well to the edge of the pool at only 500 meters and wants to stop. Do they have to stop, or are they obliged to drill to the full length? By drilling the full length, the well could be in jeopardy of being nonproductive. By cutting short, they keep the costs down to the level Company B was originally expecting, and would have participated had they been originally planned that way. Does this constitute 'drilling difficulties'? In this situation, I would say the drilling company should have the right to stop when they need to, but did they intentionally plan the well too long to push their partner away?<br><br>**Response:** *They didn't do the work they represented (i.e., they changed the scope from what they presented). The case law (see the annotations on the def'n of AFE and Clause 10.07) says that the Non-Participating Party would have a viable case to argue that it should be reoffered the opportunity to participate in the real well. One of the foundation principles of the document is that Parties that misrepresent their Operations are vulnerable. The moral of the story is that Parties shouldn't misrepresent their Operations and consult on a real time basis if they want to change their Operation materially.* |

| PROVISION | COMMENTS |
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| | 2. Company A puts Company B on notice to drill a Hz well 800 meters long. Company B participates in the well. While drilling the well, Company A sees the geology changing in the wellbore and wishes to deviate in a different direction, or stop the well after 500 meters. Company B disagrees and wishes to drill as planned. Is Company A obliged to drill the well as planned? Company B may have only a small interest in the well, or there may be multiple owners who may have differing opinions. In this case, I think that Company A will be forced to drill the well as originally planned.<br><br>The problem is, is that the operator probably has a better idea of the reservoir than the partners and should have the leaway to change the plan while drilling. But, on the other hand, the operator shouldn't be able to continue on with the operation indefinitely, if it is changed from the original scope of the AFE or notice. At some point, the operator should have to get back to the partner to get their approval for this change in scope. During drilling operations, however, this will usually be difficult at the very least, if not impossible.<br><br>Also, sometimes the horizontal length is put in to the EUB or SEM so that if the well drills easily, the operator would continue to the maximum length. In reality, the operator may know that the plan is too long, but to ensure that the operations won't get held up with well license applications, they license it to the maximum possible length. Getting to 100m of the planned length would be difficult to attain in this situation.<br><br>So, the 75m (or 100m) variance, sounds nice in theory, but I can see a lot of difficulties with it. What it would do (if it was enforced) would be to get the operator to communicate a lot better with the partners.<br><br>**Response:** *1. It is incumbent on a Proposing Party designing a well with contingencies to communicate and try to align expectations with the other participants (i.e., what are the signposts that trigger the contingencies?). If they represent they are going to do something, they will need to negotiate their way out of it if they want to change. While the small interest holder holding someone's feet to the fire makes a useful illustration, so does a 50% owner that sees an Operator want to cut bait part way through the Operation. The latter is particularly troubling when it is a budgetary issue versus any change in the technical prognosis.*<br><br>*2. We listened to Operators on the first draft and gave a lot of flexibility to the Operator. The feedback from the broader audience was very negative on this-basically that we were too Operator friendly in the original Article. This saw us evolve to the 75m radius/drilling difficulties test. It is important to remember the third element, though-you can always agree to do something different to give yourself greater flexibility to address real time information.*<br><br>*The relevant portion of the Subclause is:*<br><br>*Limitation On Variance-Notwithstanding Subclause 8.02A, the Operator of a Horizontal Well may not vary it from the description in the associated AFE or Operation Notice by: (i) …; or (ii) intentionally varying (other than as required to address drilling difficulties) the length or direction of any single Horizontal Wellbore or Horizontal Leg so that the bottom hole coordinates thereof are not within a radius of 75 metres of the bottom hole coordinates presented therefor in the associated AFE or Operation Notice <u>(or such greater radius as may be agreed with respect to the particular AFE or Operation Notice)</u>.*<br><br>*As noted in the updated annotation described in the previous comment from another commenting party, the ability to negotiate greater flexibility is ultimately situation dependent-a combination of the project and the Operator's credibility.* |

| PROVISION | COMMENTS |
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| | Is this also something that would take place in earning wells - if the well isn't drilled to the specified length, the company is deemed not to have earned?<br><br>**Response:** *You set a minimum distance, so that you have flexibility to continue, subject to some of the freehold spacing unit challenges you would have to address in Sask. The farmee should never include a distance that it doesn't really think it will attain as its commitment.*<br><br>I can see that CAPL needs to have something in place to address this issue. Perhaps there should be a proposed well trajectory, and an area outlined by the operator where the possible end points of the well have to be in to be a valid AFE or operations notice. This area, I would propose, could be a much larger area than a 100m deviation (site specific). If the wellbore length is significantly different, more than one cost estimate has to be included in the operations notice - one will be the official cost estimate, and the other(s) would be for the other possibilities (say any wellbore which deviates by 200 meters or more in any direction shown in the larger outlined area. (Sounds perhaps too complicated, but it might be doable).<br><br>**Response:** *Based on the feedback on the initial industry draft, we do not believe that any such provision would be generally acceptable in a document of general application.*<br><br>*At the end of the day, the non-operators want reasonable control of the scope of the operation in which they are offered the participation opportunity.*<br><br>*This type of provision would create a lot of potential opportunity for gaming in the hands of less scrupulous Operators. An Operator could, for example, present two scenarios, where the second is designed to scare away cash poor players.*<br><br>*Ultimately, we can't give Operators a loaded gun in the document. Operators need to negotiate their own flexibility in the context of the particular circumstances and their credibility with the other owners.* |
| 8.01 | |
| 8.02 | |
| 8.03 | |
| 9.01 | Could you please clarify what would be "the further attempted Completion of that Well"? Doesn't "(iii) any Completion program described in the drilling AFE" cover any further attempted Completion?<br>Recommendation: Remove (ii) "the further attempted Completion of that Well" from this Clause. **(Company H)**<br><br>**Response:** *Setting casing to be used for production is one of the activities that falls within the def'n of Completion, so we're talking about other activities beyond the setting of casing, such as perforations.*<br><br>Could you also clarify "any other drilling AFE" covers as used in the first sentence of this Clause? **(Company H)**<br><br>**Response:** *Article 8.00 has its own process. Any particular drilling AFE for a well outside Article 8.00 might involve an asset specific agreement by the Parties to set intermediate casing and to run cased hole logs, notwithstanding the expectations in Article 9.00.* |

| PROVISION | COMMENTS |
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| | *Insofar as we're on the same page about that new well, the Article has to be read accordingly. Made some other adjustments in the provision to make it more transparent.* |
| 9.02A/B | In Clause 9.02 A (b), you may wish to add an optional period besides 120 days, since this would not usually be a sufficient period if the lands are in a winter access only area. **(Company F)**<br><br>**Response:** *The initial leaning was to do this, but that view changed on further reflection. Addressed this possibility in an annotation. The caution here is that the uncertainty of the integrity of the cost estimate is in question when you start crossing into a later drilling season.*<br><br>As per our comment for 9.01, could you please clarify what "additional Completion" includes? Also, in the second last sentence "if it does not notify" should be replace with "unless it notifies". **(Company H)**<br><br>**Response:** *(i) Completion comprises the setting of casing and some other potential activities. As a minimum, the Operator's program for an uncased well it intends to keep will involve the setting of casing. It may or may not involve other activities, where how much it involves will be situation dependent.*<br><br>*(ii) OK.* |
| 9.02C/D | |
| 9.03 | |
| 9.04 | There is no reference to delivery to the drilling party who did not participate in the completion attempt to receive any information regarding the unsuccessful completion attempt. An issue as to what the extra costs in (a) may be and providing completion information may alleviate this concern. **(Company A)**<br><br>**Response:** *This is covered in Clause 9.05. The Non-Participating Party in the Completion would have access to the Completion information in due course under Clause 10.19. Have slightly modified the annotation on Clause 9.05 to make this more transparent.* |
| 9.05 | |
| 10.00-General Comments | |
| 10.01 | **Non-Participating Party**-The use of a triple negative may cause confusion. **(Company H)**<br><br>**Response:** *We have streamlined the definition to simplify the structure for what was admittedly an awkwardly structured definition. The annotation addresses the elections that are not captured with that outcome.*<br><br>**Participating Party –** There are instances where a party is deemed to have elected to participate in an operation (i.e. Clause 9.02B).<br>Recommendation: Replace "elected to participate" with "participates". **(Company H)**<br><br>**Response:** *Modified to address the concern.* |
| 10.02 (General) | |
| 10.02A | |
| 10.02B | (a) Is the context here for the "drilling" of a well or is it contemplated that a completion or re-completion attempt would suffice? If they would, the context of "penetration in line 6 should be reviewed. **(Company A)** |

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| | **Response:** *Changed “penetrated” to “evaluated”.*<br><br>**B(b)-**The use of “therefor” is not necessary.<br>Recommendation: Remove both instances of “therefor” in the clause. **(Company H)**<br><br>**Response:** *Deleted the first one. The second reference (“expiry of the response period therefor”) links the response period precisely to the response period for the prior Operation, so should be retained.*<br><br>**Clause 10.02B(b) – last line**<br>Recommendation: For clarity, add “incremental” after “Those”. **(Company H)**<br><br>**Response:** *Modified to address the concern.*<br><br>**Clause 10.02B(c) –** Considering the last line of Clause 10.02B(b) is a phrase, rather than using mutatus mutandis, please write out the sentences in full. **(Company H)**<br><br>**Response:** *Modified to address the concern.* |
| 10.02C | |
| 10.02D&E | **Clause 10.02E Notification of Outcome –** Last line<br>Recommendation: Replace “on request by a” with “upon the request of a”. **(Company H)**<br><br>**Response:** *Partially modified to address the concern.* |
| 10.02F | |
| 10.02G | Pad Drilling - It has been suggested that Article 10.02G could be used to address a Pad Well Drilling Program in the Draft 2007 CAPL Operating Procedure. <ed See Appendix materials at end of the Comment Matrix) We are confident our partners would not agree to the use of Article 10.02G as the pad wells we drill are approximately 3000 metres in depth. Therefore, we are providing a copy of a portion of our model Joint Lands Development Procedure for your information and review. We have attached this procedure to one of our agreements to assist in covering off the scenarios incurred when drilling multiple wells from a single pad. We request your input in determining if there is a benefit to incorporating this information into the 2007 CAPL Operating Procedure or would you consider this to be an anomalous situation that should be dealt with in the Head Agreement? **(Company D)**<br><br>**Response:** *Subclause G was designed for shallow, pattern drilling programs, so we agree that it is unlikely that Parties would be willing to accept the application of that provision to a deep drilling program.*<br><br>*While we understand why you would want to supplement the Operating Procedure for your particular circumstance, the inclusion of several pages of specialized, incremental content for a narrow circumstance of this type would make it more difficult for us to attain the broad level of support required to see the 2007 document widely accepted.*<br><br>*We have expanded the annotations on this Subclause to add some content about this type of custom modification. This provides a platform that you can use to initiate the dialogue on the concept.*<br><br>*(As an aside, the Horizontal Well components of the draft procedure you shared are based on the provisions in an earlier draft of the Operating Procedure, such that the precedent might be reviewed against the final version of the Operating Procedure in due course. Use of the 2007 document will also provide you with a simplification opportunity, as you will be able to refer to the corresponding provisions of the Operating Procedure by reference.)* |

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| | **Clause 10.02G Receiving Party May Not Defer Response –** Some parties may require some protection from large projects and would value a restriction to the number of wells or a maximum of the capital to be expended.<br>Recommendation: Please add annotation. **(Company H)**<br><br>**Response:** *Added an annotation to address the concern.* |
| 10.02H | **(ed note-A possible provision in the May working draft to address deferred payment on a well proposed before a required holding application was approved.)** Clause 10.02 (H) – this provision will be one that we consider on a case by case basis, but we generally endorse the intent here to encourage parties to resolve holding/spacing unit issues before serving operation notices. We suggest extending the 10 day period provided at the end of the clause to 15 days. **(Company F)**<br><br>**Response:** *Based on further review of the holding issue and the discussion at the May 16th meeting with the larger companies, we have removed that provision and are looking at a much simpler reference in Subclause 10.02A that allows the normal notice and response process to continue to apply, notwithstanding that a holding or other modification to drilling density would ultimately be required to produce the well. This reflects the view that the delays associated with the processing of these applications should not be allowed to frustrate operations, when the most likely outcome is that the application will be approved with some increased drilling density.* |
| 10.03 | Clause 10.03 – see earlier comments with respect to the definition of "Commenced" and the potential need for a provision dealing with pre-commencement studies and operations. **(Company F)**<br><br>**Response:** *See earlier response on the definition of Commenced.*<br><br>**10.03A –** (Second line) By adding the phrase after "Receiving Parties", an Operator would not be in breach of the contract should it conduct an Operation prior to an Operations Notice. What cause of action would a party be able to pursue? Parties should consult with one another regarding operations. These discussions can reveal opportunities which may have been overlooked by an Operator and if the operation is already commenced or has been finished, these opportunities would be lost. The clause promotes behaviour of starting operations prior to issuing a notice where there may be situations where there is a competing operations notice.<br>Recommendation: Delete phrase after "Receiving Parties". Replace "In this event" with "If a Party Commences an Operation prior to serving an Operation Notice". **(Company H)**<br><br>**Response:** *For context, Operation Notices are routinely served without prior consultation.*<br><br>*The challenge in this area is that there are two competing objectives. Proponents of Operations want to minimize the degree to which procedural limitations can frustrate their ability to conduct Operations, particularly where they have made an innocent communication error. Receiving Parties, on the other hand, want to minimize the potential degree to which they can be damaged as a result of a failure to provide prior notice of the Operation.*<br><br>*From a practical perspective, an Operator that chooses to abuse the mechanism by routinely Commencing Operations prior to issuance of an Operation Notice invites removal under the Clause 2.02 removal processes. It also conducts itself in a way in which its ongoing relationship with the other Parties and potentially broader business reputation are possibly damaged. While there will always be some companies who simply don't care about the broader relationship and reputational impacts of their* |

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| | *behaviours, these factors do influence the manner in which most companies choose to work with other interest owners.*<br><br>*The feedback consistently received on the earlier drafts was very negative about the inclusion of any onerous restriction that frustrated the ability to force a response to the Operation Notice because of the perceived likelihood that the vast majority of these types of Operation Notices would be as a result of an innocent error.*<br><br>*The provision was a compromise to allow the normal election process to be used. It is subject to the key qualification that the Receiving Parties would otherwise retain their full rights with respect to any damages they incurred, where one of the potential remedies is injunctive relief. Insofar as the damage pertains to an inability to have access to information for a Crown sale, for example, there may be potential remedies in the nature of constructive trust. The more likely scenario is that there would be some negotiated ability to acquire an interest in the parcel based as soon as a statement of claim is threatened.*<br><br>*Modified the provision to simplify the structure in the suggested manner, while preserving the protections for the Receiving Parties if they have been damaged because of the failure to deliver the Operation Notice prior to Commencement.* |
| 10.04 | (B) – There is a distinct omission regarding assignment of any contracts relating to services used in conducting the operation (ie. Rigs, under balanced equipment etc.). In that many of these contracts are entered into by the operator for multi-well programs, not restricted to the joint lands, should there be language in here requiring the operator to have under contract replacement equipment if the operation has commenced? **(Company A)**<br><br>**Response:** *Included a proviso at the end of the second sentence: "provided that the Proposing Party will not be obligated to transfer any contracts for goods and services that do not pertain exclusively to that Operation".*<br><br>**Clause 10.04 Operator for Independent Operation –** We believe the document needs to be clear that there is one Operator under the agreement notwithstanding there may be a party (who isn't the Operator) conducting operations pursuant to these clauses. **(Company H)**<br><br>**Response:** *There actually isn't segregation because the WI in the lands haven't changed. Clause 10.16 does create a mutatis mutandis Operating Procedure among the Participating Parties, though, by its own terms for the Operation for the purposes of that particular Operation.*<br><br>*Have made a change to be clearer about this relationship in the modified Subclause 10.04C and the associated annotation.*<br><br>*How companies otherwise choose to manage their administration of that is up to them and inappropriate for us to try to address in the Operating Procedure.* |
| 10.05 | Clause 10.05 C (b) – sometimes the EUB will consider a co-mingling request only after some initial segregated production data from the zones in question has been obtained. Accordingly, some softening may be appropriate here to enable some initial production from the exploratory zone to achieve that purpose without forcing the deeper participants to immediately buy out the development portion participants. We also suggest that a clause be added here providing that any party can request a production log and other appropriate tests be undertaken at any time to confirm the equity of the commingling arrangement and that appropriate changes in the sharing of production will be made by the Operator based on the results thereof. Any confidential information shared with a non-participating party will be subject to the terms of Article 18. **(Company F)** |

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| | **Response:** *Made some modifications to the Clause and the annotations to address the concern.*<br><br>**Clause 10.05C(b) –** We should utilize the definitions.<br>Recommendation: Replace "costs incurred by them in drilling and, if applicable, Completing it as" with "all Drilling Costs and, if applicable Completion Costs incurred insofar as it pertains to". **(Company H)**<br><br>**Response:** *Modified to address the concern in a slightly different way.* |
| 10.06A/B | Clause 10.06 A – In the last line, add "subject to compliance with the Regulations and any third-party rights in the proposed formation outside of the Joint Lands". **(Company F)**<br><br>**Response:** *Modified the annotations to address the concern.*<br><br>Clause 10.06 B (c) – in the third line, replace "if" with "whether" **(Company F)**<br><br>**Response:** *Modified to address the concern.*<br><br>Clause 10.06 B (d) – add the phrase ", by agreement of the participating parties," after "unless". In the second paragraph of "B", add the phrase "acting reasonably and in a bona fide manner" after "allocate costs" in line 3. **(Company F)**<br><br>**Response:** *Modified to address the concern a bit differently than suggested.*<br><br>**Clause 10.06B(d) –** The result of this clause is differing ownership of portions of the well. Although an attempt has been made to cover how the well is governed, we believe it does not it sufficiently addresses the complexities involved. **(Company H)**<br><br>**Response:** *Have made some edits to be clearer that: (i) the Non-Participating Parties have no residual interest in the well if the cost recovery is eliminated; and (ii) you can only ever get into the dual use scenario if the consent of the Non-Participating Parties (B(b) and the other Participating Parties is obtained.*<br><br>*As noted in the updated annotations, prudent parties would recognize the implementation issues and address them at this time through a customized agreement that supplements the treatment in the provision.*<br><br>**Clause 10.06B(e) –** Given that this clause doesn't apply to the relationship of the parties as it pertains to the joint lands should there be a high standard of care required (ie damages for extraordinary damages) **(Company H)**<br><br>**Response:** *As we understand the comment, it is that you don't want any application of the Clause 4.04 exclusion under Clause 10.18, so that the normal legal rules would apply in assessing damages.*<br><br>*Modified the references in this Paragraph and Subclause 10.06D accordingly.* |
| 10.06C | As this is essentially a conveyance of an interest in a well, we suggest wording to support this. We would like to see provisions to address issues such as a transfer of interest, GST, encumbrances, past liabilities and a time period for representations. **(Company H)**<br><br>**Response:** *There's something missing in here that puts a bow on the acquisition, so Subclause D has been modified to address the acquisition.*<br><br>*We otherwise struggle, though, with expanding this provision to include a lot of incremental content, given that it is already the most difficult provision in the document for users. Adding further layers of secondary content potentially has a negative impact on* |

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| | *acceptance of the Operating Procedure as a whole for relatively little gain.*<br><br>*GST is what it is and must be paid on the tangibles component of the transaction whether the document says so or not. Clause 15.01 basically precludes the Party from bringing encumbrances to the well.*<br><br>*Not having a time limit on reps and warranties in the document means that the normal limitation rules apply, such that it's not like they are perpetually exposed in the other than fraud case.*<br><br>*Overall, staying silent on some of these types of things probably creates a good incentive for the Parties to create the supplementary paper contemplated in the annotations. We agree that supplementary paper that is specific to the particular circumstance is a good thing, and this message is reinforced in the annotations.* |
| 10.06D&E | Clause 10.06 D (b) & (d) – add "threatened" in the first line of both. At the beginning of subclause (d), please add "it has provided full and frank disclosure (subject to the confidentiality provisions of Article 18) of any Environmental Liabilities, and…". **(Company F)**<br><br>**Response:** *(1) Modified to address the concern.*<br><br>*(2) We struggle with disclosure requirements any more onerous than industry's typical reps under a sale agreement.*<br><br>(D)If a Receiving Party believes that the representations are unsubstantiated or inaccurate, it may request an injunction to prevent the well being incorporated into the Agreement.<br>Recommendation: Add annotation to highlight. **(Company H)**<br><br>**Response:** *Added an annotation to address the concern.* |
| 10.06F | (a) In order to keep interests governed under the agreement, would it perhaps make sense for the Receiving party to elect to acquire the interest, however allow for the cost of acquisition and future operations to be conducted as if it was a penalty well? **(Company A)**<br><br>**Response:** *The well is being imported into the Agreement under this Subclause, where the election with respect to participation in response to the Operation Notice is under Clause 10.02. A Party that becomes a Participating Party will become an owner at the time. A Receiving Party that is a Non-Participating Party (assuming the Operation proceeds) sees the acquisition cost included as a Drilling Cost of the well for purposes of the cost recovery process in the manner suggested in the comment.*<br><br>*Made some editing changes in the text and annotations to make this outcome more transparent.*<br><br>**Clause 10.06F Well Acquired For Use in Joint Lands –** We believe the consent of all parties should be necessary to import the well into the agreement. **(Company H)**<br><br>**Response:** *This suggestion is very problematic. This would give a party the unilateral right to frustrate Operations. It may be very convenient for me to see Operations frustrated if I have a competitive drainage situation next door or I'd like to see the lands expire so I could acquire them at a sale. I have mechanisms available to protect myself if I really believe that the well is inappropriate for the contemplated use.*<br><br>*The net effect of the provision is to take away for the profit potential of an equalization, so that the transaction is shared on an at cost basis, recognizing that someone who wants to play games is always going to try to find an angle in whatever is written.* |

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| | *That being the case, the other elements of the provision actually encourage a party considering use of this provision to work collaboratively with the other parties on the front end of the wellbore acquisition, and this message is reinforced in the annotations.*<br><br>**Clause 10.06F(c) –** Due to the consequences of not paying in a timely manner, we request a provision which provides that a proposing party include this time provision in its notice. **(Company H)**<br><br>**Response:** *Have modified the annotations on Subclause 10.08C to reiterate the benefits of monitoring compliance and to note that it is unlikely that a Proposing Part would ever pursue the onerous default remedies in practice without having tried unsuccessfully to recover the amount owing.*<br><br>*As a general statement, though, it's not the Proposing Party's problem to babysit the Receiving Parties and this issue shouldn't jeopardize an ION. The Parties should read the Clause when it applies and manage themselves accordingly, and reasonable people will behave reasonably if someone misses a deadline by a few days in practice.* |
| 10.07A | |
| 10.07B | Further to your discussion with X, we reiterate the scenario wherein the Participating Parties in the Exploratory Well reimburse 100% of the costs of the Development Well to the Participating Parties in the Development Well. The Exploratory Well produces for a while and ultimately the Exploratory Well is abandoned before payout occurs. Please add in the option for the former Participating Parties in the Development Well to buy back into the Development portion of the wellbore. **(Company D)**<br><br>**Response:** *The provision has been modified so that a former Non-Participating Party that had received a reimbursement under Paragraph 10.05C(b) will have the right to participate in a Completion or Recompletion conducted in a formation to which the reimbursement pertained. This will require it to reimburse its share of any outstanding portion of the amount reimbursed to the Development Well participants under Paragraph 10.05C(b) and any unrecovered Equipping Costs (without the multiple). The latter allows them to back in on unrecovered Equipping Costs at an on cost basis, given that it has already potentially paid for some of those costs at the 200% basis during the cost recovery period.*<br><br>*If the former Participating Party in the Development Well portion does not accept the participation opportunity, the new costs will be added into the cost recovery amount under the normal process.*<br><br>*An annotation has been added. Consequential changes were also made to the definition of Receiving Party in Clause 10.01 and Subclause 10.08 and the associated annotations on Clause 10.01, Subclause 10.05C and Subclause 10.08B.*<br><br>**Clause 10.07B(a) –** We should utilize the definitions.<br>Recommendation: Replace "costs of drilling and, if applicable, attempting to Complete" with "all Drilling Costs and, if applicable, Completion Costs incurred for". **(Company H)**<br><br>**Response:** *Modified to address the concern slightly differently.* |
| 10.07C-E | Appears that the annotation currently labeled as 10.07D should be labeled as 10.07E. **(Company D)**<br><br>**Response:** *Agree.*<br><br>Clause 10.07 E – this seems virtually unworkable from a land administration perspective. While the provision makes theoretical sense, our preference would be to simply have the |

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| | interest forfeited in the spacing unit for the producing zone without any encumbrances (see language in 10.10). **(Company F)**<br><br>**Response:** *There is a lot of confusion in Land about how to set up cost recovery wells in land information systems. The bottom line is that a cost recovery is a financing arrangement that governs the production from the well without changing the Working Interest in the P&NG rights. Cost recovery wells might most effectively be administered by setting the well up as a separate split on the land information system.* |
| 10.07F | **Clause 10.07F(b) –** Last line<br>Recommendation: Replace "they" with "Participating Parties". **(Company H)**<br><br>**Response:** *Modified to address the concern.* |
| 10.07G-May Working Draft | **(ed note-Comment was on a draft provision in the May working draft restricting the ability of a Non-Participating Party to make a holding application for a section in which it was subject to a cost recovery.)**Clause 10.07 G – We have significant reservations on this proposed new clause. There are multiple reasons why a party would elect not to participate in an operation, and they will already be subject to a production penalty on the well in which they went penalty. Accordingly, we submit that it is unfair to restrict a non-participating party's right to submit a subsequent application to modify the Spacing Unit. The EUB (and other comparable regulatory bodies) has a defined process for notification and handling of objections. A participating party has an opportunity to object to a non -participating party's application through the EUB process and we believe that it should be handled by the EUB and not as a result of a restriction in the CAPL Operating Procedure. At the very least, this provision should be subject to a time restriction. **(Company F)**<br><br>**Response:** *This potential restriction on the ability of a Non-Participating Party to initiate a holding or other application to change the drilling density for a section in which it was subject to a cost recovery was included in the May working draft. Based on feedback from the May 16th meeting with large companies and subsequent feedback, it has been removed.*<br><br>**(ed note-re May working draft)**We discussed and agreed that if a party went penalty on a first well in a DSU, and then a holding was subsequently obtained, that the party in penalty on the first well could participate in additional wells within the holding area. In Article 10.07G, the most recent draft sets out that a non-participant in the first well could not apply for a holding, but my recollection of the discussion at CAPL's offices was that any of the parties could apply for the holding, and we (Company G) were in agreement with that. **(Company G)**<br><br>**Response:** *The provision has been deleted based on the major differences in philosophy that were apparent when the provision was presented for consideration.* |
| 10.07G/H<br>(H/I of updated document) | (G) We feel that this clause clearly states that "only incentives that accrue to an individual party will not reduce costs", but feel that "incentives that accrue to the joint account will reduce costs" should be further clarified. We assume that this is the intent. **(Company B)**<br><br>**Response:** *For context, the handling of incentives in this document is ultimately the same as in prior versions of the document-the cost base is not altered by incentives that accrue either to an individual participant because of attributes personal to it or collectively to all participants in the activity because the activity satisfied the applicable criteria in the Regulations, regardless of the identity of the participants.*<br><br>*The response I received to a similar concern when working on the 1990 document was that the provision creates a level playing field that is transparent-everyone knows the* |

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| | *rules at the time of their election. The existence of any activity based cash incentives that would reduce the cost base is presumably one of the factors a party should consider when examining the participation opportunity.*<br><br>*In any event, the evolution of regulatory regimes is such that regulators prefer success based incentives (royalty reductions and royalty free periods) to activity based rewards, such as the old Alberta Drilling Incentive Credits. I'm not aware of any cash based incentives currently in existence.* |
| 10.08A | |
| 10.08B | **Clause 10.08B(b)** Recommendation: For clarity, add "but not propose" in the second line after "participate in". **(Company H)**<br><br>**Response:** *Modified to address the concern.* |
| 10.08C | Clause 10.08 C – While the concept of allowing non-participants back into a well that has been materially changed from the original plan has merit, we are concerned with the added complexity and potential unfairness of allowing a non-participant to get back into a well because of a relatively minor sidetracking decision, or minor deepening within the originally targeted zone, by the original participants. We would prefer that a materiality screen be inserted here, perhaps a "blank" number of metres away from the originally proposed total depth co-ordinates or "blank" metres deeper than the original prognosis (with the numbers to be inserted as appropriate in each area), to avoid this problem. In 10.08 C (a) please add a note that the confidentiality provisions of Article 18 will apply to the provision of this information. **(Company F)**<br><br>**Response:** *(i) Made some modifications to the definition of Deepen to mitigate the risk that a well being drilled to conduct the same evaluation would be at risk because the TD happened to be a bit deeper than the original prognosis. Going into a different formation than the represented formation, though, should trigger the outcome in all cases, subject to the qualification noted below.*<br><br>*(ii) There are some fundamental issues associated with the application of this provision to higher risk, challenging operating areas, such as the foothills and NE B.C. As noted in the annotations on the Clause and in the miscellaneous annotations in the Addendum at the end of the annotations, the Parties should consider overriding this provision so that they can conduct further operations in a well inside a prescribed area. See the potential wording presented in the Addendum on this point. We have updated the annotations to suggest that users consider identifying this possibility as a contingent item on their internal precedent election sheet.*<br><br>*(iii) There is no need to refer to confidentiality, as the Article would apply to this information by its own terms.*<br><br>**Clause 10.08C Deepening or Sidetracking –** A Non-Participating Party which is able to become a Participating Party should have the same rights as those presented in Clause 10.06D(c) & (d) and the last paragraph.<br>Recommendation: Please add a provision for such right. **(Company H)**<br><br>**Response:** *Modified the introduction of Subclause 10.08A and added a paragraph at the end of Subclause 10.08C. Expanded annotations.*<br><br>**Clause 10.08C(b) –** Due to the consequences of not paying in a timely manner, we request a provision which provides that a proposing party include this time provision in its notice. **(Company H)**<br><br>**Response:** *Have modified the annotations on Subclause 10.08C to reiterate the benefits of monitoring compliance and to note that it is unlikely that a Proposing Part would ever* |

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| | *pursue the onerous default remedies in practice without having tried unsuccessfully to recover the amount owing.*<br><br>*As a general statement, though, it's not the Proposing Party's problem to babysit the Receiving Parties and this issue shouldn't jeopardize an ION. The Parties should read the clause when it applies and manage themselves accordingly, and reasonable people will behave reasonably if someone misses a deadline by a few days in practice.*<br><br>**Clause 10.08C(c) –**<br>Recommendation: Add "shall" before "exclude" in second line. **(Company H)**<br><br>**Response:** *Modified to address the concern.* |
| 10.08D | |
| 10.08E | These comments and questions come as a result of an issue raised in the use of the 1990 document.<br>Scenario:<br>• there are 4 parties to a JOA with a 1990 Operating Procedure attached<br>• 2 parties elect to participate in the re-completion of a zone in a joint well<br>• 2 parties elect not to participate<br>• the operation proceeds, is unsuccessful and the 6 month period to advise the non-participating parties to abandon expires<br>• the 2 parties who elected not to participate in the operation now have no legal obligation with respect to the abandonment<br><br>Questions:<br>• do the 2 parties who now have the responsibility to abandon the well have to advise the non-participating parties of their intention to do so or can they simply proceed on their own timeline?<br>• what would happen in the case of one (or both) of the non-participating parties wanting to access the wellbore for a different zone, but the abandoning parties have already completed the abandonment process? **(Company E)**<br><br>**Response:** *See Subclause 10.09B and the related annotations. The Non-Participating Parties do not have rights per se at this stage because they have been paid the net salvage value of the equipment associated with their WI in the well. However, the Participating Parties would typically make a courtesy call to the Non-Participating Parties in practice to try to mitigate the Abandonment expense.*<br><br>*A Non-Participating Party that remains interested in the wellbore can also be proactive and alert the Participating Parties of that potential residual interest.*<br><br>**Clause 10.08E Plugging of Wellbore Within Six Months –** Second sentence<br>Recommendation: Rather than having all participants inform the non-Participants, revise to the "Operator". **(Company H)**<br><br>**Response:** *Modified to address the concern.*<br><br>Second sentence<br>Recommendation: Replace "terminate that Operation without conducting it" with "do not conduct that Operation". **(Company H)**<br><br>**Response:** *Modified to address the concern.*<br><br>Third sentence – We should address any assignments.<br>Recommendation: Add "or successors in interest" after second occurrence of Parties. |

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| | **(Company H)**<br><br>**Response:** *Modified to address the concern.* |
| 10.08F | (b) We believe that hard coding that the Receiving Party will pay in line 5 is not correct and we may need to re-think this clause. As an example, two parties drill, complete, equip and tie in a well jointly. One month later one of the parties wishes to take his gas to a different facility and is prepared to install a flow splitter and a new pipeline and serves notice for this under the agreement. In this scenario, a meter would need to be installed however it is not part of the pipeline notice. According to this clause, the receiving party needs to pay for it notwithstanding that he has already paid his way and it is his partner who wants to spend extra monies, yet he needs to pay for the meter. **(Company A)**<br><br>**Response:** *The provision was written around a presumption that a Receiving Party was responding because of an alternative vision for a well that was not already Equipped.*<br><br>*The comment correctly notes that the presumption is not necessarily accurate. It is possible that a Party's vision may evolve in a way in which it wants to pursue a very different path with respect to a well that has already been Equipped.*<br><br>*We agree with your view that a Receiving Party that prefers the current state should not pay any of the incremental capital costs associated with the new Equipping activity.*<br><br>*The provision has been modified to include a proviso whereby the Participating Parties in the new Equipping activity will assume the incremental costs if the new equipment being installed serves substantially the same function as equipment already on the well as of issuance of the Operation Notice. An annotation has also been added.* |
| 10.09 | **Clause 10.09A Where Well Not Initially Capable of Production –** Although costs are not mentioned in this clause, it may be interpreted that the participating parties will cover those costs. Also should be subject to the take-over rights.<br>Recommendation: Add "subject to the provisions Clause 9.04, 10.08E and Article 12." **(Company H)**<br><br>**Response:** *Modified Subclause 10.09C and the associated annotations to address the concern.* |
| 10.10-General | **Clause 10.10 Wells That Preserve Title –** In some jurisdictions, a party may continue expiring lands with the conduct of a seismic program.<br>Recommendation: Please add annotation to highlight this possibility and that parties exploring in such areas should address this in their agreement. **(Company H)**<br><br>**Response:** *Expanded the General portion of the annotation materially to address these potential outcomes.* |
| 10.10A | **Clause 10.10A – Definitions** (Title Preserving Well & Subsequent Title Preserving Well) A deepening of a well may qualify and it is unclear if this type of operation is covered<br>Recommendation: After "drilled" add "in whole or part". **(Company H)**<br><br>**Response:** *Modified to address the concern.* |
| 10.10B | |
| 10.10C-E | |
| 10.10F | **Clause 10.10F Allocation of Costs Where Cost Recovery for Portion of Well –** This results in differing interests in wellbore. See comments in 10.06B(d). **(Company H)**<br><br>**Response:** *For context, there are very similar results in the other versions of the document, as the forfeiture is only linked to the rights that are expiring. The cost recovery processes apply to the other zones.* |

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| | *The only difference here is in changing the drilling costs that go into the cost recovery equation by excluding those that pertain to the forfeited zones. We have, however, added an annotation identifying the benefits of supplementary documentation at the time if the well will ultimately be managed as a dual producer.*<br><br>We suggest cost recovery should be based on the depth drilled in non-preserved lands.<br>Recommendation: Delete all wording after "Drilling Costs" and add "to the base of the deepest formation drilled in the lands not subject to forfeiture under this Clause and Completion Costs of the well pertaining to such formations not subject to forfeiture under this Clause". **(Company H)**<br><br>**Response:** *We really should be excluding these costs only insofar as the forfeited rights are deeper than the rights being retained independently of the new well. It is possible that the rights being saved by the well are actually shallower than the rights not at risk of loss. This is particularly relevant because of potential shallow rights reversion scenarios.*<br><br>*We've adjusted Subclause F and the associated annotations as a result.* |
| 10.11 | We suggest clarity that all owners must agree to the release of any data.<br>Recommendation: After "later" add "mutually". **(Company H)**<br><br>**Response:** *Simpler just to add "all" before "later". It's also important to remember that Article 18.00 and particularly Clause 18.03 also provide content, where your internal stakeholders may not have been aware of those provisions.* |
| 10.12 | |
| 10.13/10.14-General | |
| 10.13A/B | **(B)**Recommendation: Replace "believes" with "determines". **(Company H)**<br><br>**Response:** *Modified to address the concern.* |
| 10.13C/D | **Clause 10.13D Specified Cost Recovery –** The phrase "for only this purpose" seems awkward.<br>Recommendation: Delete phrase. **(Company H)**<br><br>**Response:** *Modified to address the concern.* |
| 10.13E/F | (E) We refer to your conversation with X whereby it appears that Article 10.13E(d) is in conflict with 10.13H with regard to the effective date. Article 10.13H has a specific effective date whereby 10.13E(d) implies as if the Non-Participating Party had a Working Interest and states that "will be treated as if it had initially been a Participating Party for its Working Interest share…" Please clarify. **(Company D)**<br><br>**Response:** *Modified Subclause H to clarify the interrelationship with E(d). Added an annotation.*<br><br>*Based on a related conversation, we have also modified this provision and Subclause 10.07D to be clearer about the cash adjustment process that would be used between the date of the relevant acquisition event and the first of the following calendar month when the full Working Interest rights associated with production volumes will actually be exercised in practice.*<br><br>**Clause 10.13E Right to Pay Cash –** A party should have the right to conduct due diligence prior to an election under this clause.<br>Recommendation: Add a clause allowing for this. **(Company H)**<br><br>**Response:** *Added a paragraph at the end of the Subclause allowing a field inspection* |

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| | *and an associated annotation.*<br><br>Due to the consequences of not paying in a timely manner, we request a provision which provides that a proposing party include this time provision in its notice and modify the timeframe to 21 days. **(Company H)**<br><br>**Response:** *Extended the timing to 21 days address the concern. See the Responses to similar comments about including extra notice requirements on the Proposing Party.*<br><br>**Clause 10.13E(c) –** A party may not be aware there is GST associated with tangibles.<br>Recommendation: Add annotation highlighting this. **(Company H)**<br><br>**Response:** *Expanded the annotation to address the concern.* |
| 10.13G-I | |
| 10.14 | Clause 10.14 (c) – Why is the cost recovery penalty only 150% for a production facility expansion; it provides little incentive for a reluctant party to "get with the program" and instead seems to encourage riding on a more aggressive party's coattails. **(Company F)**<br><br>**Response:** *This reflects the PJVA feedback on the document and was the result of a formal meeting with representatives of the PJVA at the direction of the PJVA Board. See the annotations for additional insights into why we arrived at this outcome.* |
| 10.15-General | |
| 10.15A | |
| 10.15B-D | |
| 10.15E/F | **Clause 10.15E Failure to Deliver Statement After Request –** We believe a participant should not be responsible for the delinquent operator.<br>Recommendation: Our first recommendation is to change "Those Participating Parties" to "The Operator". Alternatively, an annotation could highlight that an Operator failing to fulfill its duties hereunder would be subject to replacement. An annotation regarding the reasoning Participating Parties has been used instead of the Operator would also be beneficial. **(Company H)**<br><br>**Response:** *The primary objective is to encourage compliance. Making the Participating Parties responsible for sharing these charges encourages them to intervene in the process to push performance by the Operator. This should actually reduce the likelihood that they will ever have to pay. Expanded the annotations to make our thinking more transparent and to pick up the replacement angle.* |
| 10.16 | |
| 10.17 | |
| 10.18 | We do not completely agree with the last-minute change from "Notwithstanding the handling of Extraordinary Damages prescribed by Clause 4.04" to the present wording of "Subject to the handling of Extraordinary Damages" prescribed by Clause 4.04". This is additional exposure to a Non-Participating Party as compared to the 1990 CAPL Operating Procedure.<br><br>With respect to the above comments, we recommend that this clause be written as follows:(recommended changes highlighted in **Bold** text)<br><br>**10.18 Indemnification of Non-Participating Parties**<br><br>Subject to the handling of Extraordinary Damages prescribed by Clause 4.04, the Participating Parties will: |

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| | (a) be liable to each Non-Participating Party for its Losses and Liabilities; and<br><br>(b) in addition, indemnify and hold harmless each Non-Participating Party, its Affiliates and their respective directors, officers and employees from and against all of their Losses and Liabilities;<br><br>insofar as they are a direct result of, or directly attributable to, any act or omission, (whether negligent or otherwise) of the Participating Parties or their Affiliates, directors, officers, agents, employees, independent contractors, licensees or invitees in planning or conducting that Independent Operation. **Provided however, notwithstanding the foregoing handling of Extraordinary Damages, the Participating Parties will:**<br><br>**(a) be liable to each Non-Participating Party for its Losses and Liabilities; and**<br><br>**(b) in addition, indemnify and hold harmless each Non-Participating Party, its Affiliates and their respective directors, officers and employees from and against all of their Losses and Liabilities;**<br><br>**insofar as they are a direct result of, or are directly attributable to loss of well control during drilling or other well Operations conducted by or on behalf of such Participating Parties. (Company B)**<br><br>**Response:** *This comment was very surprising, as your company's comments on the previous drafts of the document were:*<br><br>*(2003 draft): "We suggest the phrase "Notwithstanding Clause 4.04" be changed to read "Subject to Clause 4.04,". Otherwise, the Participating Parties would be fully exposed to paying Extraordinary Damages to the Non-Participating Parties. We don't believe that this was the intention."*<br><br>*(October 2005 draft) "We still have a concern with the words "Notwithstanding the handling of Extraordinary Damages prescribed by Clause 4.04". Should this not say "Subject to Clause 4.04" rather than "Notwithstanding Clause 4.04"? As presently structured, we feel that the use of the word "Notwithstanding" means that the Participating Parties would be fully exposed to paying Extraordinary Damages to the Non-Participating Parties. Is that the intention?"*<br><br>*Our original view on this issue, as expressed in our response to the comment on the 2003 draft, was that the Non-Participating Parties should be in the same position as they were under the 1990 document-they should be able to obtain whatever damages a court would award having regard to the legal doctrines of causation, remoteness and foreseeability. It does not necessarily follow from this that they would recover any Extraordinary Damages, nor does it follow that it would automatically be beyond the ability of a court to make the award.*<br><br>*Based on the strongly expressed industry comments we received from several companies (including your company) on the 2005 draft, it was apparent that our proposed handling of the issue was an obstacle to our ability to move the document to closure. As a result, we modified the November 2006 draft to reflect the comments we received.*<br><br>*The additional qualification identified in your comment would add a new layer to the discussion-protection for the Non-Participating Party insofar as its losses are applicable* |

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| | *to a loss of well control.*<br><br>*There are two elements to this concept-losses the Non-Participating Party suffers as a result of being dragged into a claim by third parties (for which it seeks indemnification) and losses suffered directly by it with respect to its own losses (for which it wants the Participating Parties to be liable).*<br><br>*The Participating Parties will always be responsible to indemnify the Non-Participating Parties fully with respect to any applicable third party claim. This is because there is nothing in Clause 4.04 that releases the Participating Parties from having to indemnify the Non-Participating Parties against third party claims.*<br><br>*The change in the November draft did alter the ability of the Non-Participating Parties to obtain recovery for any Extraordinary Damages suffered by it, insofar as a court would otherwise see fit to award in a judgment as a result of the occurrence.*<br><br>*The change your company suggests would have the effect of potentially allowing a Non-Participating Party to recover Court awarded damages for such items as loss of profits, lost opportunity, compensation for business interruption if they could be linked to a loss of well control and they fell within the Court's ability to make the award. We wonder if that is actually your intention.*<br><br>*Despite some residual preference for the handling in the original 2003/2005 drafts, we do not believe that the suggested change would be supported by industry based on the feedback we have received over the course of the project. Given that some of the other outstanding issues are of higher priority to us, we have accepted the strong industry feedback on the previous draft as being representative of industry's views on the issue.* |
| 10.19 | (b) Further discussion will be required for clarification and understanding. **(Company D)**<br><br>**Response:** *We've discovered a broader problem with layered participation within an operation (i.e., one party elects not to drill, another drops out later on at completion) that required the provision to be reworked.*<br><br>Clause 10.19 – This needs some fine-tuning. The portion of the clause dealing with the 7.04 and 7.05 information should be changed to read "non-participants will be entitled to obtain this information no sooner than 45 days following the date on which it is received by the participating parties". Another potential change you could consider is the following: Instead of specifying x days after the drilling rig release date, consider X days after the "finish" date of the operation as was contemplated in the Operation Notice or if a party elected not to participate in the drilling of a well and such well was subsequently completed then x days from the finish date of the completion operation. The difficulty here would be clearly defining a transparent "finish" date. **(Company F)**<br><br>**Response:** *See first Response.*<br><br><u>Recommendation:</u> Replace "possible" with "any". **(Company H)**<br><br>**Response:** *Modified to address the concern.*<br><br>We suggest information be provided to the non-participants **150?????** days after the operation has been completed. This would cover situations where the operation (ie re-entry and deepening) is longer than the 180 day period and where an operator must cease operations due to certain circumstance (ie breakup) and recommence at a later date. **(Company H)**<br><br>**Response:** *See first Response.* |

| PROVISION | COMMENTS |
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| 10.20 | **Clause 10.20 Pooling or Unitization Prior to Cost Recovery –** We appreciate the intricacies of pooling/unit situation where there is a non-participant. We suggest an annotation to clarify if a non-participant should be a party to the pooling/unit or if they should be assigned into the agreement after cost recovery (and not subject to any ROFR). **(Company H)**<br><br>**Response:** *Some sleeping dogs are best left sleeping. Given that the WI in the lands are never changing in the cost recovery scenario and I'm the owner next door pooling with you, I don't want anything to do with your proposal unless you're getting the Non-Participating Party signed up so that I know that there is a pooling.*<br><br>*On the other hand, let's assume that I own the other half section 100% and that I have a 100% interest in the well. I don't want the Non-Participating Party trying to blackmail me on the terms of a pooling so that I can produce.* |
| 11.01 | Clause 11.01 – Our major concern with the **1990** CAPL Article 11 was that failure to elect was an election to not join in with the surrender. With small companies disappearing we were seeing issues arising from this clause. However, with the inclusion of Article 23 (Article 23 is excellent; very happy that the new CAPL has included it) we no longer have concerns with the fact that the new CAPL includes the same "failure to elect" provision. In the last sentence of this clause, we suggest that "3 Business Days" be changed to 5, and the phrase "or was deemed to have elected not to join…" be added. **(Company F)**<br><br>**Response:** *(1) This is problematic, as it would extend the revocation right into a second week.*<br><br>*(2) Modified to address the concern, with a corresponding change to Clause 12.01.* |
| 11.02 | |
| 11.03A/B | |
| 11.03C/D | |
| 12.00-General | |
| 12.01 | Clause 12.01 – Change 3 Business Days to 5. **(Company F)**<br><br>**Response:** *This is problematic, as it would extend the revocation right into a second week.* |
| 12.02 | Clause 12.02 - We suggest that the title be "*Assignment of Working Interest in Equipment and Surface Rights and Right to Produce*" to better reflect what is covered in the clause. As with Clause 10.07 E, this provision represents a substantial challenge from a land records perspective. **(Company F)**<br><br>**Response:** *(1) Modified to address the concern in a slightly different way.*<br><br>*(2) See the annotations for why the provision is structured the way it is. This can be managed by setting up the wellbore as a different ownership split in the land information system. For context, this is likely to happen quite infrequently, particularly now that the gaming aspect of the provision has been eliminated (i.e., take over the well to enhance the position on the P&NG rights in the section with no real intention of producing the well on the current basis).* |
| 12.03 | By removing the 6 month time limit, there may be an issue when the ownership of the Working Interest of the section changes.<br>Recommendation: In the third line, "or successor in interest" should be added after Abandoning Parties. **(Company H)**<br><br>**Response:** *Modified to address the concern.* |

| PROVISION | COMMENTS |
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| 13.01 | **(ed note-Comments from this party are in the context of the May working draft provision)**Clauses 13.01 A – We suggest that the second last sentence be deleted, as its inclusion creates the potential for the inequitable assumption of liabilities created during the time when there were differing interests. As a general comment, common interests reoccurring at a later time should not drive this clause, but instead the focus should be on the contractual obligations to share liabilities under segregated agreements prior to the reoccurrence of common ownership. **(Company F)**<br><br>**Response:** *We don't understand the comment. We're really only talking about one particular example in which liabilities need to be allocated because of a period of differing ownership. How does this scenario provide any greater risk than the other situations in which ownership changes?*<br><br>We like the new segregation provisions which allow for actual segregation as it relates to an Operating Agreement where there are no residual obligations to others under the head agreement. If the head agreement is a farmout and a royalty is retained, either the royalty needs to be documented in a separate agreement or NOAs are done for both the Farmout Letter and the associated Operating Agreement among the WI owners that result. **(Company F)**<br><br>**Response:** *We don't understand the comment. As noted in the annotations, there are clearly issues with trying to subdivide an active Area of Mutual Interest between segregated blocks.*<br><br>*If, on the other hand, Farmor A has an ORR on sections 1, 2 and 3 and section 3 evolves to a different ownership model where it is now owned only by B and C without D, the ORR still applies to section 3 and A would still be a third party to the NOA and any amending agreement respecting only section 3.*<br><br>We do wonder if you would like to clarify in the annotations the applicability of the segregation provisions with respect to Production Facilities. If the Production Facilities relate to wells in which there are uniform working interests, we can see how an assignment of Production Facilities associated solely with a Working Interest which is assigned can be segregated. However, if the Production Facilities relate both to the interest which is not assigned and the interest which is assigned, it is not appropriate to consider the CAPL as an operating agreement for the facility with a working interest being a blend of working interests in the wells served by the facility. That situation needs a CO&O to establish the unique division of interest for that facility. You might want to put in 14.02 that this would be an event where Article 14 ceases to apply. **(Company F)**<br><br>**Response:** *Added an annotation on this. All production volumes going through the segregated facility would be Outside Substances, such that the special election rights in Clause 14.02 would apply.*<br><br>*Whether any Party is sufficiently concerned about that outcome to require a separate CO&O Agreement is a separate question.*<br><br>*In some cases, the nature of the facility is that a Party would have that concern. In other instances, the impact is immaterial.* |
| 14.00-General | |
| 14.01 | |
| 14.02 | Clause 14.02 – We suggest the deletion of the last portion of this clause commencing with the words "using as a basis…", as it unduly restricts the range of agreement terms that might be applicable in different areas. **(Company F)** |

| PROVISION | COMMENTS |
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| | **Response:** *We agree that there may be circumstances in which this could provide the Parties with less than an ideal outcome. We believe, though, that the integrity of the PJVA document (and the future enhancements to those documents) is such that this would not be the case in the vast majority of situations. We struggle with including any outcome that would see us give up the certainty and benefits of the PJVA document and adversely affect 85%+ of potential agreements for the minority of agreements for which the PJVA document provides a suboptimal outcome. The onus should be on those Parties to recognize this when creating their own agreement.*<br><br>*In practice, though, we would expect that any gaps in the PJVA document relative to the preferred outcome will be issue specific, such that the PJVA document will still provide the Parties with a very good platform from which to address their customized solution at the time.* |
| 14.03 | |
| 14.04 | Paragraph 14.04 A - you could have Paragraph 14.04 D added to the list of conditions after the last sentence. In the second sentence of that paragraph, we suggest that silence should only be considered deemed acceptance if the service being provided is interruptible or reasonable efforts service. On the 4th line of Clause 14.05 we suggest the addition of the word "operating" before the word "costs". **(Company F)**<br><br>**Response:** *(1) We don't believe the change is required. The Operator is in control under Subclause 14.04D.*<br><br>*(ii) It is inappropriate to provide a silent party of whatever percentage with an effective veto over these arrangements. Given that the deemed affirmative outcome is what is used in the PJVA CO&O Agreement, we have difficulty modifying the onus when the decisions in the CO&O are of much greater potential impact than for any minor facility allowed to be managed under the land agreement.* |
| 14.05 | |
| 14.06 | |
| 14.07 | |
| 14.08 | |
| 14.09 | |
| 15.01 | |
| 15.02 | |
| 16.01 | |
| 16.02 | |
| 17.01 | |
| 18.01 | Amend as follows: last paragraph, first sentence delete the reference to 18.01(e)Rationale: This appears to be inconsistent with industry practice as the Parties that are being referred to in 18.01(e) are bound by certain professional ethical standards that would encompass this clause, therefore, we do not appreciate the need to have a separate non-disclosure agreement in place. **(Company D)**<br><br>**Response:** *Modified and added an annotation. The generic reference in the introduction to Clause 18.01 creates a duty on the disclosing Party to take reasonable measures to retain the confidential status of disclosed information, where it would be accountable if any of these advisors were using the information inappropriately. Companies would* |

| PROVISION | COMMENTS |
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| | *typically have confidentiality provisions in their arrangements with many of their service providers.* |
| 18.02 | |
| 18.03 | Clause 18.03 – Suggest that approval of the other parties may be arbitrarily withheld for any reason whatsoever. **(Company F)**<br><br>**Response:** *Subclause 1.05B already delivers this outcome.* |
| 18.04 | |
| 18.05 | |
| 18.06 | |
| 19.01 | Clause 19.01 A – Add the words "or elsewhere in this Operating Procedure" after the Subclause reference in line 1. **(Company F)**<br><br>**Response:** *Modified to address the concern a bit differently.*<br><br>Clause 19.01 C – Add at the beginning of this clause "Except as provided in this Operating Procedure and this Clause" **(Company F)**<br><br>**Response:** *Modified to address the concern a bit differently.*<br><br>We strongly feel that there needs to be a link to Article 18. Accordingly, we suggest the insertion of the following additional subclauses:<br><br>*(d) Notwithstanding the provisions of subClauses 19.01 (a), (b) and (c) above, no party will release or cause the release of information without complying with provisions in the Head Agreement and all other provisions of this Operating Procedure that concern the maintenance, use and release of information.*<br>*(e) Where information is confidential then the release thereof will not occur or be allowed in any way without the prior express consent of all Parties. This express agreement can be arbitrarily withheld by any Party except as is permitted in this subclause and in Clauses 18.01 and 18.02. The provisions of Clauses 19.01 (a) and (c) will not apply to information that is confidential. The first sentence of Clause 19.01 (b) will apply to information that is confidential provided that prior express agreement has first been obtained from the Parties. In the case of an emergency the Operator may release only that portion of confidential information necessary to comply with the Regulations or for safety and health purposes that arise out of that emergency.* **(Company F)**<br><br>**Response:** *Modified Subclauses B and C to address the concerns a bit differently. The Article is a limited exception to the overarching obligations in Article 18.00, such that Article 18.00 only ceases to apply to the limited extent described in Article 19.00, as modified.* |
| 20.01 | |
| 21.00-General | In addition, in this clause, once a party elects the article to apply, we would be bound to be subject to arbitration since the article 21.01 is a full election of all of the various dispute mechanisms, including arbitration. It may be that we only wish to go through mediation but do not wish in any event to go to arbitration. In such an instance, if we elect article 21.01, we are forced to go down the road to arbitration if the other party serves a notice to arbitrate. **(Company A)**<br><br>**Response:** *Given that mediation is ultimately a consensual process, parties open to mediation will consider it regardless of the election they make.* |

| PROVISION | COMMENTS |
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| | *As the real concern here is the contemplated arbitration process, the Response will focus on the arbitration component of the Article.*<br><br>*The items included in the list in Clause 21.03 are basically fact based items, where our basic premise is that the fear of arbitration will typically motivate Parties to negotiate more reasonably than if litigation were the contemplated dispute resolution mechanism.*<br><br>*The one item on the list about which there is potentially the greatest sensitivity is audit exceptions. This is because it involves an interpretation of the Agreement.*<br><br>*To mitigate the concern about that item, it has been moved to the end of the list and presented as an optional Paragraph. The optional Paragraph has been structured so that the selection of arbitration only applies for any individual audit exception of less than $_________. This allows the Parties to tailor the provision so that it doesn't apply to any audit exceptions or, if selected, only to any not exceeding the negotiated financial threshold.*<br><br>*The revised structure gives Parties much greater control over the potential application of Clause 21.03. We hope that this modification will mitigate much of your current concern.*<br><br>*Parties also remain free to modify the Clause on a custom basis to exclude any other specific items of concern from the listed items.* |
| 21.01A | |
| 21.01B | We had previously made a comment that this clause was inadequate since a party has no ability to respond to the first notice provided under that subclause. The response from CAPL was that there is nothing to preclude a party from responding to a notice and further they did not wish to add additional layers to the formality of this structure. However, we believe with this clause, our comments needs to be reiterated one more time in light of the fact that it has to be made clear that further arbitrations under clause 21.01 (c) essentially refer to the dispute as is described in the first party's notice in clause 21.01 (d) <ed note-should be (b)> and therefore once you set the mandate for the arbitrator, there is no possibility (at least technically on the review of this clause) for the other party to provide its own opinion or reasons for the dispute. It is therefore necessary that under clause 21.01 (b) a party has the ability to provide its own response to the reasons for the dispute such that if the matter later goes to arbitration, the arbitrator will have both sets of documents. Currently, the clause states that the first disputing party can force the other party to arbitration on its own terms, ie. its set of reasons listed under 21.01 (b) and an arbitrator may agree that he has no further mandate under the terms of this agreement to open the issue any wider. **(Company A)**<br><br>**Response:** *As noted in our Response to a similar comment on the previous draft and in the updated annotations on the November, 2006 draft, a Party is free to respond to any such notice.*<br><br>*We understand from this presentation of the comment that the concern is to ensure that a Party receiving a notice from another Party is not prejudiced when the arbitrator's mandate is set.*<br><br>*We have added an additional sentence at the beginning of the last paragraph of Clause 21.03 to mitigate this concern. ("Each Party to the dispute will have a fair opportunity to participate in the preparation of the description of the mandate to be presented to the arbitrator and to present its perspective on the issue(s) in dispute during the arbitration process.")* |
| 21.01C | |

| PROVISION | COMMENTS |
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| 21.02 | we should have some quick mechanism to decide on a mediator if the parties are unable to agree on one. **(Company A)**<br><br>**Response:** *See the annotations about the selection of a mediator. The nature of mediation is that you can't have compulsory mediation. As noted in the annotations, the major philosophic difference between an evaluative mediator and a facilitative mediator are such that we are reluctant to impose a mediator on the Parties. The Parties probably aren't very motivated to proceed with mediation if they are unable to agree on a mediator.* |
| 21.03 | |
| 21.04 | |
| 22.01 | |
| 22.02 | |
| 23.01 | Clause 23.01 – At the end of "(ii)" add the words "or its legal entity is no longer in existence or recognized by the Regulations". **(Company F)**<br><br>**Response:** *Modified to address the concern.* |
| 23.02 | |
| 23.03 | |
| 23.04 | |
| 24.01-General | An additional clause should be added to Article 24 which states: "In the case of a disposition of a portion of an interest in the Joint Lands which are also subject to a holding order or a similar regulatory order requiring common ownership under the Regulations (referred to in any form as a "Holding"), as between the Parties, hereunder, including the assignee of the acquired interest, the effect of the Holding shall prevail in full force and effect unamended. Each Party subject thereto agrees not to file any objections to the Holding, to attempt to collapse the Holding, or to argue that it is entitled to more Petroleum Substances than it had otherwise acquired pursuant to the said disposition. **(Company A)**<br><br>**Response:** *We have included a modified version of this provision and associated annotations in the miscellaneous provisions of Article 25.00. It is more appropriately placed there because a change of interest might be a result of Article 24.00 or by operation of other provisions of the Agreement.*<br><br>*This comment and a parallel client request also caused us influenced us to review the holdings topic again. We concluded that the issue required additional coverage in the document, so have made an additional modification in Subclause 10.02A.* |
| 24.01Alternate A | |
| 24.01 Alternate B(a) | |
| 24.01Alternate B (b/c) | |
| 24.01 Alternate B(d) | |
| 24.01Alternate B (e/f) | |
| 24.01Alternate B (g-i) | |
| 24.02 | In Article 24, we wonder if an addition to the annotations to discuss "Seismic Review Options" might be appropriate. If such a "pay or drill" agreement is entered into, this |

| PROVISION | COMMENTS |
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| | would contemplate it being deemed an "Earning Agreement" only if the option to drill is exercised. If it is not, then the provisions of Clause 24.01 are not applicable. It appears you are looking for feedback on Paragraph 24.02 (f), as indicated by the question marks. This amendment seems to leave an opening for abuse and we would suggest that most will elect for that exception provision not to apply. Acreage and bona fide value options exist elsewhere to cover this situation sufficiently. **(Company F)**<br><br>**Response:** *(1) Modified the definition of Earning Agreement slightly to ensure that the payment component wouldn't compromise the status of a Seismic Review and Option (SRO) as an Earning Agreement. Otherwise, we believe that the provision is clear that a SRO is an Earning Agreement. Ultimately, the essence of a SRO is that there is a series of elections under which the potential assignee has the option to conduct certain work to acquire a Working Interest in some of the rights held as Joint Lands.*<br><br>*(2) The Paragraph will be retained, and has generally been well received, as noted in the survey data distributed at the May 16th meeting with larger companies. The aspect under review is whether it applies to all Earning Agreements or only those that include lands in addition to the Joint Lands.*<br><br>*We chose to simplify the exemption so that it applied to all Earning Agreements, not just those that included other lands and lands in addition to the Joint Lands.* |
| 24.03A | |
| 24.03B | |
| 24.04 | |
| 25.01 | |
| 25.02 | |
| 25.03 | |
| 25.04 | Clause 25.04 – At the end of this clause, please add the phrase "which consent may be arbitrarily withheld". **(Company F)**<br><br>**Response:** *Modified to address the concern in a different way.* |
| 25.05 | |
| 25.06 | |
| Addendum-Special Circumstances | |
| Addendum-Case Law on Fiduciary Obligations and Breach of Confidence | |
| Addendum-Misc Annotations on ROFRS | |
| Other Additions | |

**(Background information on Company D comments on Subclause 10.02G and Pad Drilling scenario)** JOINT LANDS DEVELOPMENT PROCEDURE

1. **DEFINITIONS**

1.1 In this Procedure, unless otherwise defined in this Section 1.1 or elsewhere in this Procedure, the capitalized words and phrases shall have the meanings given in the Joint Operating Agreement and in addition:

"Affiliate" means any corporation, partnership or legal entity which: (i) controls directly or indirectly a Party; (ii) is controlled directly or indirectly by a Party; or (iii) is directly or indirectly controlled by a corporation, partnership or legal entity which directly or indirectly controls a Party. A corporation will be deemed to be controlled by any such entity that owns or effectively controls, other than by way of security only, sufficient voting shares of that corporation (whether directly or through the ownership of shares of another corporation that owns shares of that corporation or through other equity interests) to elect the majority of its board of directors, and control of a partnership means the ownership, directly or indirectly, of 50% or more of the partnership;

"Development Well" means a well, insofar as the geological zones penetrated in the drilling thereof (or proposed to be penetrated, as provided in the AFE therefore or the Operation Notice relating thereto) are stratigraphically above the base of the deepest geological zone in which an existing well within 3.2 kilometres of the Spacing Unit thereof (as measured from the coordinates where the other well penetrated, and the proposed well is anticipated to penetrate, the top of such geological zone) is or has been capable of production of Petroleum Substances in Commercial Quantities;

"Horizontal Leg" means the portion of any wellbore that is: (i) drilled at an angle of at least 80 degrees from vertical, measured from a line connecting the initial point of penetration into a formation to the endpoint of that wellbore in that formation; and (ii) is downhole from the point of vertical kick-off in a well;

"Multi-Leg Horizontal Well" means a Development Well containing a two (2) or more Horizontal Legs drilled from a Vertical Stratigraphic Wellbore;

"Multiple Well Drilling Program" means a program, which may be proposed pursuant to Article 3, to drill two (2) or more Development Wells (including Single Leg Horizontal Wells but excluding Multi-Leg Horizontal Wells), each from a separate surface location, which program may include two (2) or more Development Wells within the same Spacing Unit;

"Pad Well" means a Development Well to be drilled under a Pad Well Drilling Program;

"Pad Well Drilling Program" means a program, which may be proposed pursuant to Article 5, to drill two (2) or more Development Wells (including Single Leg Horizontal Wells but excluding Multi-Leg Horizontal Wells), from a single surface location, which program may include two (2) or more Development Wells within the same Spacing Unit;

"Procedure" means this Joint Lands Development Procedure; and

"Program Well" means a Development Well to be drilled under a Multiple Well Drilling Program;

"Single Leg Horizontal Well" means a well containing only a single wellbore, a portion of which is drilled at an angle of at least 80 degrees from vertical, measured from a line connecting the initial point of penetration into a formation to the endpoint of that wellbore in that formation; and

"Vertical Stratigraphic Wellbore" means a wellbore that is drilled vertically with the intent that one (1) or more Horizontal Legs may be kicked-off from that wellbore.

## 2. MULTIPLE, PAD AND MULTI-LEG HORIZONTAL WELLS

2.1 The notice procedures contained in Articles 3, 4 and 5 of this Procedure shall, with respect to any Development Well properly proposed pursuant thereto, supersede and replace the provisions of subclause (e) of Clause 1002 (*Proposal of Independent Operation*) of the Operating Procedure and a Party may become a Proposing Party with respect to:

(a) up to eight (8) Program Wells pursuant to a Multiple Well Drilling Program in accordance with Article 3;

(b) up to eight (8) Pad Wells pursuant to a Pad Well Drilling Program in accordance with Article 4; or

(c) a Multi-Leg Horizontal Well containing up to four (4) Horizontal Legs in accordance with Article 5.

## 3. NOTICE PROCEDURE FOR A MULTIPLE WELL DRILLING PROGRAM

3.1 If a Party wishes to propose a Multiple Well Drilling Program, such Party shall serve separate Operation Notices for each Program Well. The Operation Notices shall:

(a) be served together;

(b) indicate the total number of Program Wells proposed; and

(c) state the order in which such Program Wells are to be drilled.

3.2 A Party shall be entitled to elect to separately participate in each Program Well.

3.3 The time in which a Party has to elect to participate in the first Program Well shall be thirty (30) days after receipt of the Operation Notices served pursuant to Section 3.1 and the time period to elect to participate in each subsequent Program Well shall be seventy-two (72) hours from the later of:

(a) The receipt by such Party of notice of the rig release of the prior Program Well; and

(b) if such Party has already elected to participate in the prior Program Well, the receipt of the information regarding such prior Program Well in accordance with Clause 702 (*Drilling Information and Privileges of Joint-Operators*) and Clause 703 (*Logging and Testing Information to Joint-Operators*) of the Operating Procedure.

3.4 Notwithstanding the generality of the foregoing:

(a) a well may only be proposed pursuant to a Multiple Well Program if that well is a Development Well;

(b) a well may only be proposed pursuant to a Multiple Well Program, if the surface location of such well is within 3.2 kilometers of the surface location of the well that immediately precedes it in the Multiple Well Program; and

(c) the maximum number of wells that may be proposed pursuant to any Multiple Well Drilling Program is eight (8); and

(d) a well containing more than one (1) Horizontal Leg may not be proposed pursuant to the provisions of this Article 3.

## 4. NOTICE PROCEDURE FOR A PAD WELL DRILLING PROGRAM

4.1 If a Party wishes to propose a Pad Well Drilling Program, such Party shall serve separate Operation Notices for each Pad Well. The Operation Notices shall:

(a) be served together;

(b) indicate the total number of Pad Wells proposed; and

(c) state the order in which such Pad Wells are to be drilled.

4.2 A Party shall be entitled to elect to separately participate in each Pad Well.

4.3 The time in which a Party has to elect to participate in the first Pad Well shall be thirty (30) days after receipt of the Operation Notices served pursuant to Section 4.1 and the time period to elect to participate in each subsequent Pad Well shall be seventy-two (72) hours from the later of:

(a) The receipt by such Party of notice of the rig release of the prior Pad Well; and

(b) if such Party has already elected to participate in the prior Pad Well, the receipt of the information regarding such prior Pad Well in accordance with Clause 702 (*Drilling Information and Privileges of Joint-Operators*) and Clause 703 (*Logging and Testing Information to Joint-Operators*) of the Operating Procedure.

4.4 Notwithstanding the generality of the foregoing,

(a) a well may only be proposed pursuant to a Pad Well Drilling Program if that well is a Development Well;

(b) the maximum number of wells that may be proposed pursuant to any Pad Well Drilling Program is eight (8); and

(c) a well containing more than one (1) Horizontal Leg may not be proposed pursuant to the provisions of this Article 4.

## 5. NOTICE PROCEDURE FOR A MULTI–LEG HORIZONTAL WELL

5.1 If a Party wishes to propose a Multi-Leg Horizontal Well, such Party shall serve an Operation Notice for such Multi-Leg Horizontal Well. The Operation Notice shall:

(a) separately indicate the cost of the Vertical Stratigraphic Wellbore and the Horizontal Legs;

(b) indicate the length, direction and eventual bottomhole coordinates of each Horizontal Leg, the number of Horizontal Legs; and

(c) indicate whether the eventual number, length and direction of the Horizontal Legs will depend upon the situations encountered as the well is drilled.

5.2 A Party shall be entitled to elect to separately participate in the Vertical Stratigraphic Wellbore and all of the Horizontal Legs; provided, however, that it is acknowledged that a Party shall only be entitled to elect to participate in all of the Horizontal Legs and a Party shall not be entitled to elect to participate in the Horizontal Legs unless such Party has previously elected, or concurrently elects, to participate in the Vertical Stratigraphic Wellbore.

5.3 The time in which a Party has to elect to participate in the drilling of the Vertical Stratigraphic Wellbore shall be thirty (30) days after receipt of the Operation Notice served pursuant to Section 5.1 and the time period to elect to participate in all of the Horizontal Legs shall be seventy-two (72) hours from the later of:

(a) the receipt by such Party of notice of the completion of the Vertical Stratigraphic Wellbore; and

(b) if such Party has already elected to participate in the Vertical Stratigraphic Wellbore, the receipt of the information regarding such Vertical Stratigraphic Wellbore in accordance with Clause 702 (*Drilling Information and Privileges of Joint-Operators*) and Clause 703 (*Logging and Testing Information to Joint-Operators*) of the Operating Procedure.

5.4 Notwithstanding the generality of the foregoing:

(a) no Operation respecting a Multi-Leg Horizontal Well will vary from the description of such Operation detailed in the Operation Notice or associated AFE by: (i) drilling Horizontal Legs in excess of the number of Horizontal Legs detailed in that AFE or Operation Notice; or (ii) extending any single Horizontal Leg a total distance more than 100 metres in excess of the proposed distance detailed in the relevant Operation Notice or associated AFE; and

(b) no Operations Notice respecting a Multi-Leg Horizontal Well may include as its primary target more than one formation in each Horizontal Leg; and

approval of an Operation Notice or associated AFE for a Multi-Leg Horizontal Well will not be deemed to be approval for any additional Operations conducted in contravention of this Section and such additional Operations must be conducted in accordance with further approvals of the Participating Parties or under a separate Operations Notice, as applicable.

## 6. INTERRUPTION OF OPERATIONS

6.1 In the event a Multiple-Well Drilling Program, Pad Well Drilling Program or Multi-Leg Horizontal Well is interrupted for a period of more than thirty (30) consecutive days, by the removal of the drilling rig being utilized to conduct the Operations thereunder, then:

(a) in the case of a Multiple-Well Drilling Program or a Pad Well Drilling Program, all outstanding Operation Notices shall be re-served for each outstanding Program Well or Pad Well, with the time to elect to participate in such re-served Operation Notices re-commencing in accordance with Sections 3.3 and 4.3, as applicable; or

(b) in the case of a Multi-Leg Horizontal Well, a new Operation Notice shall be re-served with respect to that portion of the Operation then outstanding with respect to such Multi-Leg Horizontal Well, with the time to elect to participate in such re-served Operation Notice re-commencing in accordance with Section 5.3.

## 7. WELL INFORMATION

7.1 The provisions of Clause 1019 (*No Joint Operations Until Information Released*) of the Operating Procedure shall not apply in respect of a Horizontal Well Program, Pad Well Drilling Program or a Multi-Leg Horizontal Well and a Party shall have no right to receive information with respect to Operations carried out under a Horizontal Well Program, Pad Well Drilling Program or a Multi-Leg Horizontal Well, as applicable, until the earlier of:

(a) the date it becomes a Participating Party in the applicable Operation; or

(b) ninety (90) days after the date of the release of the drilling rig used to drill such Horizontal Well Program, Pad Well Drilling Program or a Multi-Leg Horizontal Well.

## 8. COMMON COSTS FOR PAD WELLS AND MULTI-LEG HORIZONTAL WELLS

8.1 If a Party participates in some but not all off the Pad Wells drilled under a Pad Well Drilling Program or elects to participate in the Vertical Stratigraphic Wellbore but not in the Horizontal Legs of a Multi-Leg Horizontal Well, then such Non-Participating Party shall be responsible for:

(a) in the case of a Pad Well Drilling Program, a proportionate share of any common costs of the Pad Well Drilling Program (including, without limitation, surface acquisition and preparation costs or the cost shared equipment) based upon: (i) the number of Pad Wells such Party has participated in; divided by (ii) the total number of Pad Wells drilled or otherwise utilizing such shared equipment; or

(b) in the case of a Multi-Leg Horizontal Well, one half (1/2) of the surface acquisition and preparation costs for the Multi-Leg Horizontal Well.

**Background information with a commenting party's suggested rewrite of Clause 5.05 to provide greater protections for Non-Operators (e.g., ability to object to charges, time frame for application of remedies, etc.).**

**Operator's Lien And Default Remedies**

A. *Operator's Lien*-The Operator will have a lien and charge with respect to the interest of each Party in the Joint Lands, the wells and equipment thereon, the proceeds of production of Petroleum Substances produced from that Joint Property, to secure payment of that Party's share of the costs and expenses incurred by the Operator for the Joint Account. That lien and charge has priority over any other lien, charge, mortgage or other security interest applicable to those interests.

B. *Notice of Default*-In the event of a default by a Non-Operating Party, The Operator may issue a notice to that Non-Operator specifying the default and requiring it to be remedied within 30 days, This notice must be in the form contained in Schedule A. If the notice has not been properly prepared, or which has not forecast operations and advance of expenditures in accordance with Clause 5.04, it is null and void.

C. *Dispute of Notice*-The defaulting non-operator has 10 business days to dispute such notice. Such a dispute shall contain the details and basis of the dispute. Such a dispute may consider setoff against unpaid amounts, payable to that Non-Operator in its possession from the Operator hereunder or under any other agreement then in effect between them (including any separate agreement created under Article 13.00 because of an inconsistency in Working Interests.)

D. *Dispute Resolution*-Amounts disputed shall be resolved as follows:

(a) It is expected that the companies will attempt to resolve the disputed amounts in good faith by negotiation.
(b) If negotiation does not work, and in any event after an additional 30 days from Dispute of Notice of Default, the matter may be referred to Alternate Dispute Resolution in accordance with Article 21.00 or resolved at law.
(c) In the event that Dispute Resolution takes more than 90 days from Notice of Default, the proceeds of production shall be paid into an escrow account in accordance with Clause 5.01 E (f). Operating, marketing and transportation expenses for such production shall be from the escrow until the matter is resolved to the satisfaction of both parties or at law.
(d) In the event that a Notice of Default is found to be inaccurate by more than 15 percent, the notice is immediately null and void. The Operator may then issue a new notice.

*E.* *Partial or Interim Payments*-The non-operator may direct to which operations, wells or AFEs partial

payments are made. The Operator shall promptly update the amounts owing on the Notice of Default.

F. *Default Remedies*-Subsequent to the Notice of Default the Operator may, without limiting its other rights hereunder or otherwise held at law or in equity, remedy any amounts due under Clause 5.02 which are not disputed under Clause 5.10 C, or which have been conclusively determined under Clause 5.01 D, as follows:

Immediately;

(a) maintain actions against that Non-Operator for all such unpaid amounts and interest thereon on a continuing basis,

(b) charge that Non-Operator compound interest, as computed monthly, on that unpaid amount from the day that payment is due until the day it is paid. Interest will accrue at the rate of 2% per annum higher than the rate designated as the prevailing prime rate for Canadian commercial loans by the principal Canadian chartered bank used by the Operator, regardless of whether the Operator has notified that Non-Operator in advance of its intention to charge interest on that unpaid amount;

(c) set-off against that unpaid amount, any amount payable to that Non-Operator in its possession from the Operator hereunder or under any other agreement then in effect between them (including any separate agreement created under Article 13.00 because of an inconsistency in Working Interests);

(d) withhold from that Non-Operator any information and rights with respect to Joint Operations which have not been paid for. For clarity, such information shall be on a well by well, AFE by AFE basis. Such information and rights will be supplied or restored to it promptly after the default is fully rectified, provided that this does not permit the Operator to: (i) incur any expenditure for the Joint Account that requires approval under Subclause 3.01B; (ii) deny the right of that Non-Operator to issue or receive any notice served hereunder; or (iii) deny that Non-Operator's rights hereunder with respect to any such notice;

After 60 days (90 days from Notice of Default):

(e) register a lien against the property with the appropriate provincial authorities, The Operator is then entitled to recover their funds in priority to the Non-Operator from any purchasing party.

(f) recover the funds owing from the proceeds of production, after payment of royalties, operating costs, transportation and marketing fees.

After 90 days (120 days from Notice of Default):

(g) The Operator may elect lack of payment to be a deemed penalty election, in accordance with the other provisions in this agreement, for the operations not paid for on a well by well and AFE by AFE basis. The Operator shall provide the Non-operator with 10 days advance notice that this election is to be exercised.

After 180 days (210 days from Notice of Default);

(h) enforce the lien referred to in Subclause 5.05A on the following basis:

(i) by taking possession of that defaulting Non-Operator's Working Interest in the Joint Lands and other Joint Property and all of its rights relating to that Working Interest until the default is fully rectified;

(ii) subject to Paragraph 5.05B(f) and the other Subparagraphs of this Paragraph (but notwithstanding Clauses 6.01 and 24.01 respecting the handling of production and dispositions respectively), by disposing of any Working Interest of which it has taken possession in whole, in part or in separate parcels, at public auction or by private tender on whatever terms it may arrange, having given at least 10 Business Days' prior notice to that Non-Operator of the time and place of that disposition;

(iii) the Operator may only dispose of that Working Interest for such price and on such conditions as it determines on a *bona fide* basis are reasonable, having due regard to the possible recovery of funds for that Non-Operator in excess of the amount owed by it hereunder, provided that the Operator obtains any required court order confirming the disposition before it is completed;

(iv) the Operator will apply the proceeds of that disposition to the amount then owing to it by that Non-Operator under this Agreement, including accrued interest and reasonable costs incurred by it in making that disposition, such as reasonable legal fees and disbursements on a solicitor and its own client basis; and

(v) the Operator will promptly pay the balance then remaining to that Non-Operator.

The Operator will deliver to that Non-Operator all transfers, assignments and other conveyance documents required to effect that disposition. That Non-Operator will execute and return them to the Operator within 5 Business Days after their receipt.

G. *Remedies Are Cumulative*-The rights and remedies granted to the Operator under this Clause are cumulative, and may be exercised separately or in combination. Subject to any application of Clause 1.07 to the time for commencing legal proceedings and any application of Paragraph 5.05B(f) to cause a defaulting Party to become a Non-Participating Party, the Operator's exercise, or failure to exercise, any rights and remedies available to it hereunder, at law, in equity or under the Regulations does not limit its rights or remedies for the particular default or release the defaulting Non-Operator from any other obligations that have accrued to it under this Agreement.

H. *No Merger*-The obligation to pay interest at the rate specified in Paragraph 5.05B(a) applies until the financial default is rectified, and will not merge into a judgment for principal and interest, or either of them. The Parties waive the application of any Regulations to the contrary, insofar as permitted thereunder.

I. *Default By Operator*-The Non-Operators that assumed the Operator's share of costs or expenses incurred for the Joint Account because of a default of the Operator may appoint a Non-Operator as their representative to enforce their rights under this Clause, pending the appointment of a new Operator under Article 2.00. That appointed representative may then exercise any of the rights and remedies otherwise available to the Operator hereunder, *mutatis mutandis*, to rectify that default.

J. *Recovery Of Royalty Amounts*-A Party that is required to pay royalties on behalf of another Party (or its predecessor in interest) to maintain any of the Title Documents in good standing after that other Party's default in payment of royalty to the grantor thereof may exercise any of the rights and remedies otherwise available to the Operator under this Article, *mutatis mutandis*, to recover the additional royalties paid by it because of that default.