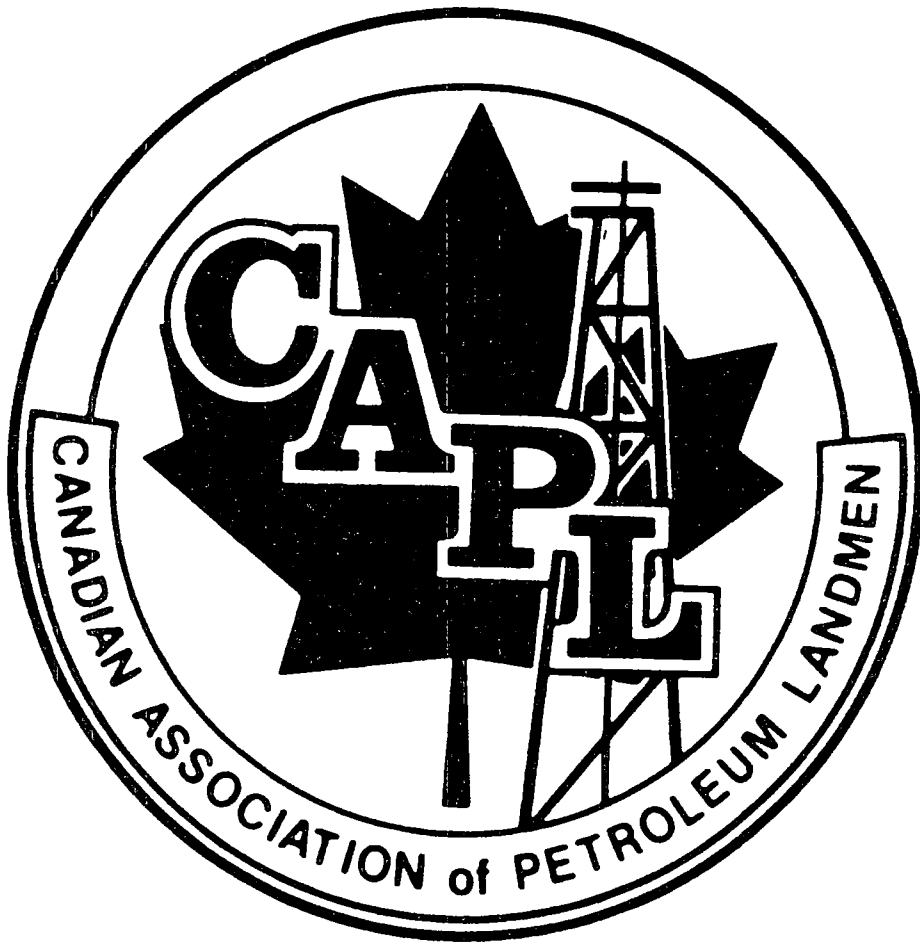


MODEL FRONTIER OPERATING PROCEDURE (ANNOTATED)



**CANADIAN ASSOCIATION OF PETROLEUM LANDMEN
1988**

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Heading: The Operating Procedure would be attached to a head agreement which would include any special provisions negotiated by the parties. All other Schedules would be attached to the Operating Procedure as noted in Clause 1.02.

Subclause B: PASC has prepared a 1986 Frontier Exploration Accounting Procedure. The Operating Procedure is premised on the assumption that this form will be utilized.

Subclause D: 1) Some companies are forming partnerships comprised solely of corporations which are affiliates for tax and other business reasons. The inclusion of the first proviso ensures that the partnership would be regarded as an affiliate of each partner. If the partnership is comprised of other entities, it is probably preferable to include a definition of affiliate which is tailored to the specific fact situation in the head agreement.

OPERATING PROCEDURE

Exhibit I, attached to and forming part of the Agreement dated the _____ day of _____ A.D. 19 ____, among

1 00 INTERPRETATION

1 01 Definitions

In this Operating Procedure the following definitions shall apply unless the context otherwise requires

- A. "Abandonment" means the proper plugging and abandonment of a well in compliance with the Regulations including the salvage of the salvageable material and equipment respecting such well and the restoration of the wellsite
- B. "Accounting Procedure" means the rules, provisions and conditions set forth and contained in Schedule B"
- C. "A.F.E." means a written request by the Operator to the Non Operators for authority to make an expenditure for the conduct of a Joint Operation hereunder
- D. "Affiliate" means, with respect to the relationship between corporations, that one of them is controlled by the other or that both of them are controlled by the same person partnership, corporation or body politic, and for this purpose a corporation shall be deemed to be controlled by those persons, partnerships, corporations or bodies politic which own or effectively control, other than by way of security only sufficient voting shares of the corporation (whether directly through the ownership of shares of the corporation or indirectly through the ownership of shares of another corporation which owns shares of the corporation) to elect the majority of its board of directors provided that
 - 1) a partnership which is a Party and which is comprised solely of corporations which are Affiliates as described above shall be deemed to be an Affiliate of each such corporation and

ii) In the absence of the last phrase distinct Crown corporations might be regarded as affiliates. As it cannot be said that those parties would speak with one voice it seems a better practice to provide that they are not affiliates.

Subclause G- The only practical impact of this Subclause Subclause H (Average Interest) and Subclause CC (Operation Working Interest) is in the event that ownership is not homogeneous. If ownership is homogeneous the average document interests, average interests, operation working interests and working interests would be uniform.

If the ownership were to become heterogeneous the average document interest would be used for charges respecting an individual document of title, such as ESRF levies.

Suppose that Exploration Licence #1 contained 100 000 ha, that A holds a 50% interest in 50 000 ha, a 25% interest in 25 000 ha and a 10% interest in 25 000 ha. A's average document interest would be

$$\frac{(50\% \times 50\,000) + (25\% \times 25\,000) + (10\% \times 25\,000)}{100\,000}, \text{ or } 33.75\%$$

Subclause H As discussed above, this definition only has relevance in the event that ownership is not homogeneous. The calculation would be analogous to that used in the previous example, except that there would be no requirement that the lands be subject to a single document of title.

The average interests would be used in votes respecting the entire agreement lands such as the selection of an operator.

Subclause J 1) Paragraph (a) is based on the definition contained in the Canada Petroleum Resources Act. As it is based on a variable, namely technical analysis, it may not be attractive to some because of its uncertainty.

While providing certainty, paragraph (b) may not be attractive because of its arbitrariness. In addition it must be recalled that this alternative cannot be used where the penalty applicable to non participation with respect to an exploratory well is based on the prospect.

ii) The definition includes a deeming provision with respect to wells in a discovery area to minimize the respective uncertainty and arbitrariness of the alternatives.

- ii) a corporation controlled in such manner by Her Majesty the Queen or an agency of her Majesty the Queen shall not be regarded as an Affiliate with respect to any other such corporation solely by reason of the common control of Her Majesty the Queen
- E "Agreement" means the body of the document to which this Operating Procedure is attached and made a part thereof
- F Agreement Lands means those lands described in Schedule A or so much thereof which remain subject to this Operating Procedure from time to time and, except where the context necessarily otherwise requires, the Agreement Lands include the Petroleum Substances within upon or under such lands
- G Average Document Interest means, at any time with respect to a Document of Title the average interest of a Party in such Document of Title expressed as the ratio of the Net Hectares then held by such Party in that portion of the Agreement Lands subject to such Document of Title to the total hectares in that portion of the Agreement Lands subject to such Document of Title
- H "Average Interest" means, at any time, the average interest of a Party in the Agreement Lands, expressed as the ratio of the Net Hectares then held by such Party in the Agreement Lands to the total hectares in the Agreement Lands
- I "Deepen" means the drilling of a well hereunder to a depth or formation which is deeper than the target depth or formation to which such well was intended to be drilled at the time the Parties participating in such well initially approved the drilling of such well
- J "Delineation Well" means a well described in paragraph _____ [specify (a) or (b)] of this Subclause J, being
 - (a) a well drilled hereunder for the primary purpose of evaluating the reservoir extent reservoir quality or economic viability of producing (other than for test purposes) from a Potentially Productive Unit when such well is so located in relation to another well which has penetrated an accumulation of Petroleum Substances in such Potentially Productive Unit that there is a reasonable expectation that such accumulation will also be penetrated by such well or

iii) The fact that a well is being drilled outside an existing discovery does not necessarily mean that the well is not a delineation well. The status of the well is governed by the contract among the parties, not a government classification, subject to the special deeming provision respecting wells drilled on discovery areas.

iv) The definition also clarifies the status of a well which is in part a delineation well and in part a deep test. Notwithstanding that a well which penetrates a potentially productive unit may, in fact, be an exploratory test with respect to shallow horizons, the well is deemed to be a delineation well to the base of the potentially productive unit and an exploratory well below. Even where the well is a shallow exploratory test which does not penetrate the potentially productive unit, that well is deemed to be a delineation well. Otherwise, the penalty provisions become overly complex and may operate to encourage parties to conduct a less than optimal evaluation of a discovery (i.e., deepen to delineate the PPU or drill a shallow exploratory well before the first delineation well).

In circumstances where a shallow exploratory test is planned, it is probably preferable to attempt to negotiate an agreement on a case by case basis where the application of the delineation well penalty would not be equitable.

v) The classification of a well as a delineation well or an exploratory well may be contentious. Remember that a party has the right to refer the issue to arbitration pursuant to Subclause 22.01A and that a prudent operator would attempt to reach a consensus on the areal extent of a discovery prior to the delineation phrase.

Subclause K. The inclusion of the reference to the rejection of the application by governmental authorities would place those agencies in an awkward position if the parties were to allow the impact on penalties to enter into the application process. Significant discoveries and commercial discoveries must continue to be determined in the most objective and factual manner possible within the parameters of the regulations. The purpose of the phrase is to provide for the transitional period where an independent operation notice is issued while an application for a significant or commercial discovery is under consideration by the relevant governmental agency. Where the application is submitted after the independent operation notice is issued, the proviso has no effect under 9.02B. The phrase simply assumes that an application which has been submitted will be approved until advice to the contrary is received from governmental authorities. It is in the interest of no party that it conduct itself in such a manner as to violate the integrity of the process, and the parties are prohibited from making representations with respect to the application other than pursuant to 6.07 in any event.

Subclause L. This definition applies to the exploration phase documents (Exploration Licence or Significant Discovery Licence, as the case may be) and any document issued in place thereof, which would include a Production Licence.

- (b) a well drilled hereunder for the primary purpose of evaluating the reservoir extent reservoir quality or economic viability of producing (other than for test purposes) from a Potentially Productive Unit encountered by a previously drilled well when such well is drilled within _____ kilometres of such previously drilled well as measured at the point where the well bore of each such well intersects the top of such Potentially Productive Unit (or the top of the deepest such Potentially Productive Unit if more than one)

Provided that a well drilled within a Discovery Area shall be deemed to be a Delineation Well if it is drilled to evaluate the Potentially Productive Unit(s) included therein or shallower Geologic Units Notwithstanding the foregoing portion of this Subclause J, a well shall be deemed to be a Delineation Well with respect to all Geological Units penetrated by such well to the base of such Potentially Productive Unit (or to the base of the deepest Potentially Productive Unit penetrated thereby if there is more than one Potentially Productive Unit penetrated by such well) and if such well penetrates Geologic Units which are deeper than the aforementioned Potentially Productive Unit, such well shall be an Exploratory Well with respect to such deeper Geologic Units

- K. "Discovery Area" means that portion of the Agreement Lands which is included in a declaration of significant discovery or a declaration of commercial discovery made pursuant to the Regulations and for the purposes of Subclause 9 02B (Exploratory Penalty Area) includes any portion of the Agreement Lands for which the Operator has, with the approval of the Management Committee, requested the appropriate governmental authorities to grant a declaration of significant discovery or a declaration of commercial discovery, insofar as such request has not been rejected or altered by such governmental authorities
- L. "Documents of Title" means the documents listed in Schedule "A" and any document issued or negotiated in place thereof or derived therefrom, including any amendments, renewals or extensions of any such documents, conferring any right to explore any portion of the Agreement Lands for Petroleum Substances, to develop those lands in order to produce Petroleum Substances or to produce Petroleum Substances therefrom
- M. "Drilling Unit" means a drilling rig drillship semi submersible, barge jack up rig platform service rig or any other form of drilling structure utilized for the drilling or evaluation of a well hereunder

Subclause P Once again, the interests other than working interests only have any relevance in the event that ownership is heterogeneous. Article 3.00 will determine the interests which will be used with respect to the allocation of any particular benefit, obligation or liability, subject to the right to review an allocation in any particular instance through arbitration.

Subclause Q Note that the definition does not apply to events which a party could have prevented with the exercise of reasonable diligence at a reasonable cost.

Subclause T This definition is included because of the importance in accurately defining different sands in the context of loss of interest penalties where there is not significant well control.

- N Environmental Studies Research Fund means the environmental studies research fund established by the Regulations or any similar fund established by the Regulations to replace such fund
- O Exploratory Well means any well drilled pursuant to this Operating Procedure insofar as such well is not a Delineation Well
- P for the Joint Account means for the benefit interest, ownership, risk cost expense and obligation of the Parties in proportion to their respective Working Interests Operation Working Interests, Average Document Interests or Average Interests as the context requires pursuant to Article 3 00 (Application Of Operating Procedure To Sub Areas)
- Q "Force Majeure" means an occurrence beyond the reasonable control of the Party claiming suspension of an obligation hereunder which has not been caused by such Party's negligence or fault and which such Party was unable to prevent or provide against by the exercise of reasonable diligence at a reasonable cost and includes without limiting the generality of the foregoing an act of God, strike, lockout or other industrial disturbance, act of the Queen's enemies, war revolution insurrection, blockade, riot, fire, lightning, unusually severe weather, storms, ice interference, flood, explosion, accident shortage of labour or materials and the Regulations or other lawful requirements of governmental bodies or agencies, provided always that lack of finances shall in no event be deemed to be an occurrence or event beyond a Party's control
- R "Forecast" means a written statement, initiated by the Operator, of the Joint Operations which are anticipated to be conducted on or with respect to the Agreement Lands during the Forecast Period, together with a written statement of the estimated expenditures to be made in connection with such operations
- S Forecast Period means the twelve month period beginning on January 1st of each year or such other date as may be agreed upon by the Parties
- T Geologic Unit means a body of rock which occupies a similar stratigraphic position as determined by lithology, well log characteristics, geophysically correlatable events, biostratigraphy or other age dating techniques

Subclause U Most judicial considerations of the concept of gross negligence were in automobile cases where an injured non paying passenger had to demonstrate that the driver's conduct was grossly negligent in order to be successful in a suit against the driver. Since the driver's insurance would generally cover a successful claim by the injured passenger, courts have tended to minimize the distinction between simple and gross negligence in those cases in order to find for the passenger.

If this definition were excluded operators would have much greater legal responsibility for their actions than would be the case with the definition. Such a risk might in fact be such a disincentive that parties may be reluctant to assume the operatorship.

Subclause Y 1) Mobilization and demobilization costs are allocated pursuant to Clause 218 of the PASC Frontier Exploration Accounting Procedure.

Although that Clause does not specify the manner in which such costs will be allocated, there are generally two major alternatives, as follows:

(a) mobilization costs are initially charged to the first well, with an adjustment on a per diem basis among that well and subsequent wells over a maximum period of X months and

(b) estimated mobilization and demobilization costs are reflected in the day rate when the operator is utilizing its own drilling unit/support vessels.

ii) The allocation of mobilization and demobilization costs, of course, is also a crucial term of any agreement whereby a company is entering into a rig contract at the completion of a previous contract or is taking a temporary assignment during a contract. If, for example, the rig had originally been brought to Canada from New Orleans, the subsequent lessee would be reluctant to assume all of the costs of returning the rig to New Orleans.

Subclause Z. This provision is only relevant where ownership is heterogeneous. Suppose that the relevant area is a 100 000 hectare block, that A has a 50% interest in 50 000 hectares, a 25% interest in 25 000 hectares and a 10% interest in 25 000 hectares. A's net hectares with respect to such area are $(50\% \times 50\,000) + (25\% \times 25\,000) + (10\% \times 25\,000) = 33\,750$ net hectares.

Subclause CC 1) This Subclause only has relevance to the extent that ownership is heterogeneous and an operation is one which is reasonably expected to evaluate portions of the agreement lands with varying ownerships. There is an additional prerequisite with respect to the drilling of a well, in that the mechanism only applies after the parties have elected pursuant to 9 02A or B to utilize a prospect based delineation or exploratory well penalty, as the case may be. To the extent that the parties elect to utilize

- U Gross Negligence means such wilful misconduct or such wilful omissions or such wanton and reckless conduct or omissions as constitutes in effect a wilful or utter disregard for harmful foreseeable and avoidable consequences
- V "Joint Operation" means any operation, study or other activity conducted by the Operator for the Joint Account pursuant to this Operating Procedure
- W Joint Property means at any point in time, the Agreement Lands, together with all wells, facilities equipment materials, information, funds and other property held for the Joint Account hereunder
- X Management Committee means the committee established pursuant to Clause 4 01 (Creation And Structure Of The Management Committee)
- Y Mobilization and Demobilization Costs means the costs incurred to arrange for, to assemble and to transport a Drilling Unit and the personnel equipment materials, services and supplies incidental thereto to the location of a well to be drilled hereunder, including, without limitation, any inspection and certification costs of such Drilling Unit required as a condition of governmental approval for the drilling of such well, and the cost in returning such Drilling Unit to its owner or the designate of such owner after the Rig Release of such well and the removal of such personnel, equipment, materials and supplies from the location of such well all as more particularly set forth in the Accounting Procedure
- Z "Net Hectares" means, with respect to the interest of a Party in any particular area of the Agreement Lands, the sum of the products obtained by multiplying the total number of hectares with respect to which such Party holds a uniform Working Interest in each specific portion of such area by the Working Interest of such Party in such portion
- AA. "Non Operator" means a Party other than the Operator
- BB "Operating Procedure" means the body of the document which includes this definition together with the Schedules attached hereto and made a part hereof
- CC "Operation Working Interest" means
- (a) with respect to a well which is to be drilled upon or with respect to more than one Sub Area where the penalty applicable to non participation with respect to such well is

fixed section penalties, there would be no cost syndication respecting drilling operations (See also Subclause 3 02B)

ii) The calculation of the operation working interests with respect to a well is flexible in that it is accomplished through primarily a consultative process, rather than a simple mechanical allocation following the determination of the relevant prospect(s). This enables the parties to consider such factors as anticipated sand thickness, the weight to be applied to primary and secondary objectives and the location on the structure (i.e., crest vs flank with respect to a simple anticline)

iii) Paragraph (b) is premised on the assumption that the work will be of value to all of the lands with respect to which the operation will be conducted. This assumption will not always be correct and the provision could be applied inequitably if the spirit of the provision is ignored. Suppose for example that a seismic program were focused on one sub area and the ends of the lines extended on to adjoining sub areas. Since this work would have no value to the adjacent sub areas, the program should be conducted for the joint account of the parties holding the relevant sub area.

Subclause EE. Note the requirement that a party retain a working interest. There are several provisions which may continue to apply after a party no longer has a working interest, such as a continuing requirement to maintain information confidential (15 04), an obligation to transfer an unencumbered interest (23 04) and the final settlement of accounts (23 11).

Subclause HH. The Operating Procedure does not apply to the development phase. This definition is only used in Article 2 00 (Scope of Operating Procedure).

Subclause II. This definition would basically only be relevant if the penalty applicable to non participation with respect to a well were based on the prospect. The only other application of the definition is the requirement to maximize the selection of sections comprising the prospect where the proposing party may

dependent on the determination of the Prospect to be penetrated by such well the percentage of costs of such well which is determined to be applicable to a Party's Working Interests in such Sub Areas pursuant to Article 4 00 (Management Committee) paragraph 9 03A(c) (Proposal Of Independent Operation) or Article 22 00 (Arbitration) as the case may be, and

- (b) with respect to any operation other than as described in paragraph (a) of this Subclause CC which is to be conducted upon or with respect to more than one Sub Area, the percentage of costs of such operation which is determined to be applicable to a Party's Working Interests in such Sub Areas by taking the ratio of the Net Hectares then held by such Party in the specific portions of the Agreement Lands with respect to which such operation is to be conducted to the total hectares in such specific portions of the Agreement Lands

DD "Operator" means that Party designated by the Parties to conduct Joint Operations, as provided hereunder

EE "Party" means a person firm, partnership, corporation, trust or other body politic or corporate which has a Working Interest and which is bound by this Operating Procedure

FF "Petroleum Substances" means petroleum and natural gas and every other mineral or substance, or any of them, an interest in, or the right to explore for or to develop, is granted or acquired pursuant to the Documents of Title or the Regulations

GG "Potentially Productive Unit" means a Geologic Unit insofar as in accordance with good oil field, geological, engineering and economic practice, it has been indicated by a well to contain an accumulation of Petroleum Substances in sufficient quantities to warrant further drilling in order to evaluate the economic viability of producing (other than for test purposes) from such accumulation

HH "Production Facilities" means all equipment necessary for the production of Petroleum Substances (other than for test purposes), including, without restricting the generality of the foregoing, gathering facilities, production platforms and all other facilities for the processing or transportation of Petroleum Substances

II "Prospect" means a Geologic Unit to be penetrated by a well to be drilled hereunder insofar as in accordance with good oil field, geological, geophysical, engineering and economic

select the additional sections to be included in the fixed section exploratory well penalty in paragraph 9 02B(a)

Subclause JJ Given that the document may be used in different jurisdictions, there is no reference to the Canada Petroleum Resources Act

Subclause KK. The definition is similar to the definitions of average document interest, average interest and operation working interest in that it is only relevant to the extent that ownership is heterogeneous

Suppose that a particular document of title is held as follows

	Sub Area I	Sub Area II
A	25%	
B	50%	-
C	25%	-
D		25%
E		50%
F		25%

As regards A, B & C D, E and F are related parties and vice versa

This concept is only used to address the legal responsibilities which A, B & C have to D, E & F The term is only used in Clauses 3 01 7 03 and 11 07

Subclause MM. The size of a section varies, depending upon the latitude and the number of sections in a grid area Sample section sizes are as follows i) Hibernia area 354 ha \pm , ii) Venture area 372 ha \pm , iii) Offshore B C - 323 ha \pm , iv) Fort Norman area - 281 ha \pm and Beaufort Sea 355 ha \pm

Subclause NN Because of the probability that the interests in the agreement lands will be heterogeneous at some point during the term of the document and the inherent difficulty in attempting to apply the conventional segregated lands provision (Article XIII of the 1981 CAPL Operating Procedure) to this scenario the concept of three dimensional "sub areas" has been included in this document. (See also Article 3 00)

Subclause OO As a general statement, a Supplementary AFE will be required where there is a 10% overrun Because of the possibility that additional expenditures may be required to satisfy regulatory requirements or in emergency situations, as provided in Clause 6 01, the provision is structured more broadly

practice, such Geologic Unit is indicated to be a stratigraphic or structural geologic anomaly prospective of containing Petroleum Substances in sufficient quantities to warrant the drilling thereof

- JJ the Regulations means all statutes, laws, rules, orders and regulations in effect from time to time and made by governments or governmental boards or agencies having jurisdiction over the Agreement Lands or over the operations to be conducted thereon
- KK. Related Party means a Party having a Working Interest in a Sub Area contained in a particular Document of Title in relation to Parties holding Working Interests in the other Sub Areas contained in such Document of Title
- LL. "Rig Release" means that point in time when the Drilling Unit used to drill a well hereunder is ready and able to move from the location of such well after such well has been drilled to its total depth and Suspended or Abandoned, as the case may be
- MM Section has the meaning contained in the Regulations
- NN "Sub-Area" means, where the Working Interests of the Parties are not consistent throughout the Agreement Lands a specific three dimensional portion of the Agreement Lands with respect to which the Working Interests of those Parties holding Working Interests therein are consistent throughout as more particularly described, if applicable, in Schedule "A"
- OO "Supplementary A.F.E." means a written request by the Operator to the Non Operators for authority to make an additional expenditure for the conduct of a Joint Operation hereunder to the extent that such expenditure exceeds the amount the Operator has otherwise been authorized to expend for such operation pursuant to the provisions of this Operating Procedure
- PP Suspend" means to discontinue the drilling of a well and to place in such well such casing plugs and equipment as are necessary to enable such well to be re-entered at a later date for the conduct of further operations

Subclause RR. (1) The most practical concern of a non-operator at this time is probably with respect to the allocation of standby time. Whether standby charges applicable to the period between operations will be chargeable to the joint account depends on whether the operator has entered into a long term rig contract with the approval of the parties or whether it has done so without such approval. If the former is the case, such standby charges would be a charge for the joint account. If, on the other hand the latter is the case, the operator would have great difficulty in arguing that such charges would be necessarily incidental to the drilling of a specific well.

ii) Note the inclusion of the reference to artificial islands and berms. Those construction costs are treated distinctly from drilling costs under the Accounting Procedure, as indicated by paragraphs 101(j) and 302(c) of the PASC Frontier Accounting Procedure.

Subclause SS. This provision pertains to a party's actual interest in a specific portion of the agreement lands. The definitions of average document interest and average interest on the other hand, are basically administrative concepts designed to address the complexity of heterogeneous ownership. If ownership is homogeneous, this will be the only relevant interest in the absence of independent operations.

Clause 102. i) Schedules "C", "D" and "E" are included because of the differences among agreements and the practical fact that they will require revision from time to time.

ii) Schedules "C" and "D" will be tailored to the individual agreement by the parties.

- QQ "Third Person" means a person firm partnership corporation trust or other body politic or corporate that is not bound by this Operating Procedure other than with respect to any obligations to which a former Party remains subject hereunder
- RR "Well Costs" means all monies expended for drilling and Abandoning or Suspending a well hereunder including without limiting the generality of the foregoing the costs of site specific surveys respecting the selection of the location for such well (if applicable) the costs of constructing an artificial island or berm (if applicable) access roads and site restoration (if applicable) the costs of any environmental, engineering or socioeconomic study which is required to be conducted pursuant to the Regulations or the Documents of Title as a prerequisite to the issuance of governmental approval for the drilling of such well, the costs of logging coring and testing such well, the cost of sidetracking such well (if applicable) the costs for contracting the services of a Drilling Unit for the drilling of such well Mobilization and Demobilization Costs attributable thereto and all other costs applicable to such well insofar as they are necessarily incidental to the drilling of such well
- SS "Working Interest" means the share, expressed as a percentage, to which each Party is entitled, as among the Parties in the rights conferred by the Documents of Title with respect to any portion of the Agreement Lands, as set out in Schedule "A", including any amendments of such Schedule made from time to time

1 02 Schedules

A. Schedules Incorporated Into Operating Procedure

The following Schedules are attached hereto and made part of this Operating Procedure

- (a) Schedule "A", which describes the Documents of Title, the Agreement Lands the Sub Areas (if applicable) and the Working Interests of the Parties
- (b) Schedule "B", which is the Accounting Procedure,
- (c) Schedule "C" which describes the policies of insurance required pursuant to Subclause 6 09B (Policies To Be Obtained For The Joint Account)

Paragraph 1 02B(a) Revisions to Schedules "B and D" would be made through the execution of an amending agreement

Paragraph 1 02B(b) In the event there is a dispute respecting the correction of a schedule the matter shall be referred to the management committee for determination by unanimous vote In the event the parties are unable to resolve the question the matter may be referred to arbitration

- (d) Schedule D which specifies the drilling information to be supplied to the Parties pursuant to Clause 6 17 (Submission Of Information To Parties) and
- (e) Schedule E , which lists the address for service of each Party

B Revision Of Schedules

- (a) The Operator shall, when necessary, forward revised copies of Schedule A Schedule C and Schedule E to the Parties in a timely manner Each such revised Schedule shall be numbered consecutively and shall include the effective date of such revision
- (b) A revised Schedule shall be deemed to be correct unless within thirty (30) days of the receipt thereof, a Party notifies the other Parties that it does not believe that such revised Schedule is accurate and its reasons for such belief Unless another Party objects to such Party's proposed correction within ten (10) days of the receipt of such Party's notice the Operator shall issue a corrected Schedule, effective as of the effective date of such revised Schedule In the event another Party objects to such Party's proposed correction or if a Party proposes a correction to a revised Schedule more than thirty (30) days after the receipt thereof, the correction of such Schedule shall be determined by the Management Committee, provided that such corrected Schedule shall be effective retroactively to the effective date of such revised Schedule unless otherwise directed by the Management Committee However, in the event the Management Committee is unable to make such determination, the correction of such Schedule and the effective date of such correction may be referred to arbitration pursuant to Article 22 00 (Arbitration)

1 03 References

Unless otherwise expressly stated, the references "hereunder" "herein" and "hereof" refer to the provisions of this Operating Procedure, and references to Articles, Clauses, Subclauses, paragraphs or subparagraphs herein refer to Articles, Clauses, Subclauses, paragraphs or subparagraphs of the body of this Operating Procedure

1 04 Headings

The headings of Articles Clauses and Subclauses herein and any other headings or captions or index hereto shall not be used in any way in construing or interpreting any provision hereof

Clause 1 07 The inclusion of this provision ensures that terms such as "Abandon, Abandoning and Abandonment" can be used in the context of the simple definition of Abandonment

Clause 1 10 This provision is based on Clause 104 of the conventional CAPL Operating Procedure

Clause 1 11 i) This clarifies the timing problems inherent in the use of such terms as "within" or "at least" when referring to a specific number of days

ii) Clause 103 of the PASC Frontier Exploration Accounting Procedure states that where the due date of a joint account billing falls on a weekend or a statutory holiday, the payment will be due on the preceding business day

1 05 Singular/Plural

Where the singular, masculine or neuter is used herein, the same shall be construed as the plural or feminine and vice versa as the context or the reference to the Parties may require

1 06 Reference To Entities

A reference to an entity herein either by its name or its status with respect to a particular provision hereof at a particular point in time shall be deemed to include a reference to the successor or predecessor in interest of such Party as the context may require

1 07 Derivatives

Where a term is defined herein a capitalized derivative of such term shall have a corresponding meaning unless the context otherwise requires

1 08 Time

Any reference to time herein shall mean Mountain Standard Time or Mountain Daylight Time during the respective intervals in which each is in force

1 09 Use Of Canadian Funds

All references to "dollars" or "\$" herein shall mean lawful currency of Canada and subject to the Accounting Procedure, all billings and payments shall be in Canadian currency

1 10 Alternate Provisions

Where alternate provisions are provided for herein and the Parties have failed to designate which of such alternate provisions shall apply, the first alternate provision in each such case shall apply, as if the Parties had designated such alternate provision

1 11 References To Days

Any reference to days herein is a reference to calendar days unless specifically stated otherwise, and where the phrase "within" or "at least" is used with reference to a specific number of days herein the day of receipt of the relevant notice and the day of the relevant response meeting

Subclause 1 12B The working interests of the parties and the allocation of legal responsibility provided in the Operating Procedure (i.e. Article 7 00) shall continue to apply among the parties, notwithstanding the registered interests in the documents of title and regulatory provisions respecting legal responsibility for activities conducted hereunder

or event, as the case may be shall be excluded in determining the relevant time period Notwithstanding the foregoing sentence in the event the time for doing any act expires on a Saturday Sunday provincial statutory holiday in the Province of Alberta or a federal statutory holiday in Canada, the time for doing such act shall be extended to the next normal business day except as prescribed in the Accounting Procedure with respect to the payment of billings

1 12 Conflicts

A. Conflicts Within Document

If any provision contained in the body of the Agreement conflicts with a provision in the body of this Operating Procedure or in a Schedule attached hereto the provision of the body of the Agreement shall prevail and if any provision contained in a Schedule attached hereto conflicts with a provision in the body of this Operating Procedure the provision of the body of this Operating Procedure shall prevail

B. Conflicts Between Document And Regulations

In the event of any conflict between the body of the Agreement or this Operating Procedure and the Regulations or the Documents of Title, the Regulations or the Documents of Title as the case may be shall govern The Agreement and this Operating Procedure thereupon shall be deemed to be modified accordingly, and, as so modified the Agreement and this Operating Procedure shall continue in full force and effect at all times Notwithstanding the Regulations or the Documents of Title, however

- i) the Working Interests of the Parties shall prevail for the purposes of this Operating Procedure where the Working Interests of the Parties in the Agreement Lands, or a portion thereof differ from the registered interests with respect to the Document of Title applicable to such Agreement Lands, and
- ii) the allocation of legal responsibility among the Parties for losses incurred hereunder including, without restricting the generality of the foregoing Article 7 00 (Indemnity And Liability Of Operator) and Subclause 9 08F (Indemnification And Liability) shall govern among the Parties

Subclause 1 12C Subsidiaries of multi national corporations may be subject to certain restrictions under foreign laws The provision is primarily designed to ensure that such restrictions are not violated for the purposes of foreign law with minimal impact on the contractual relationship of the parties

Clause 2.01 1) It is preferable to include transitional pre development and feasibility studies within the scope of this document so that there is a mechanism whereby the project can proceed towards the development phase in a timely manner If such studies were ignored in this document, the parties would be making a significant investment on the assumption that they would be able to negotiate a reasonable development agreement at a later date, a view which is obviously predicated on the good faith of the parties

A reliance on this premise, of course, is even more dangerous with respect to the development phase While it would be preferable to cover a project from its inception through the development phase the unfortunate fact is that such a form is not feasible at this time

Although the principles respecting the exploration-delineation phase have evolved to the stage where they are either generally accepted or can be addressed through the use of options, there is no consensus on the principles applicable to the development phase Moreover, development provisions will necessarily be tailored specifically to the particular operating environment and consortium

To attempt to address such matters at this time in this document would undoubtedly result in a significant delay in the finalization of the document. Although there are significant risks associated with a limitation of the scope of the document, the advantage to be obtained by finalizing an exploration-delineation phase document presently outweighs those risks

However in the event an individual consortium wished to address the development phase at this time those parties are free to develop a construction and operating procedure for inclusion in their document

ii) Ideally, the parties would negotiate a transitional agreement or a development agreement in order that the development studies would be conducted under that document. The references to development activities throughout the Operating Procedure are simply to ensure that the work can be conducted before the successor document is finalized

C Severability

Notwithstanding the foregoing Subclauses of this Clause 1 12 if any provision of the body of the Agreement or this Operating Procedure is prohibited or unenforceable in any jurisdiction to which a Party is subject such provision shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction

2 00 SCOPE OF OPERATING PROCEDURE

2 01 Operations To Be Conducted Pursuant To Operating Procedure

This Operating Procedure shall govern the operation of the Agreement Lands and the maintenance of the Joint Property by the Parties and shall apply to

- (a) the drilling, Suspension and Abandonment of Exploratory Wells and Delineation Wells on the Agreement Lands and the testing and other evaluation of such wells,
- (b) the conduct of geological operations, geophysical operations and geochemical operations upon or respecting the Agreement Lands,
- (c) the conduct of environmental socioeconomic or engineering studies relating to the exploration of the Agreement Lands,
- (d) the conduct of environmental, socioeconomic or engineering studies related to the future development of the Agreement Lands, including studies pertaining to the acquisition and installation of Production Facilities and the production, processing and transportation of Petroleum Substances to the anticipated point of market,
- (e) the preparation and submission to governmental authorities of socioeconomic and environmental impact statements development plans and such other documents as may be required to be submitted to such authorities with respect to the exploration or development of the Agreement Lands,
- (f) the conduct of any other operation or activity required to be performed with respect to the Agreement Lands pursuant to the Regulations or Documents of Title, and

Clause 2.02. The obligation to dispose of production and to take in kind under the development agreement is referenced to avoid potential American anti combines problems respecting the appearance of joint marketing. In practice, the parties would probably decide individually to take a similar course of action respecting the transportation and processing of production.

Article 3.00. This Article is designed to clarify the relationship of the parties when the agreement lands include more than one sub-area. Basically, it classifies matters as one of three types:

- (a) Matters pertaining solely to one sub area, in which case the Operating Procedure applies among the parties having an interest therein,
- (b) Matters pertaining to the entire agreement lands or a specific document of title, in which case the Operating Procedure applies among the parties having average interests or average document interests, as the case may be or
- (c) Matters pertaining to some other specific portion of the agreement lands (such as a particular prospect), in which case the Operating Procedure applies among the relevant parties

Although this Article has no relevance if the interests in the Agreement Lands are homogeneous, an appreciation of this Article is crucial if the interests are heterogeneous.

Assume, for example, that the Agreement Lands comprise one exploration licence of 200 000 ha held as follows:

	Sub-Area 1	Sub Area 2
A	25%	-
B	25%	-
C (Operator)	25%	33.33%
D	25%	16.67%
E		25%
F		25%

- (g) such other items as may be described in the Agreement or as may be subsequently unanimously agreed by the Parties

2 02 Parties To Negotiate Development Agreement

If Petroleum Substances are discovered on the Agreement Lands in sufficient quantities that it is reasonably anticipated that production of such Petroleum Substances (other than for test purposes) will occur in the foreseeable future, the Parties shall proceed with due diligence and in good faith to negotiate an agreement respecting the development of such Agreement Lands, including, without limiting the generality of the foregoing, the drilling of wells for the purpose of production, the acquisition and installation of Production Facilities the production and processing of Petroleum Substances and the transportation thereof to the anticipated point of market. Such agreement shall include provisions whereby each party thereto shall own and have the obligation to take and dispose of its share of the production of Petroleum Substances thereunder in kind.

3 00 APPLICATION OF OPERATING PROCEDURE TO SUB-AREAS

3 01 Matters Pertaining Solely To Single Sub Area

If the Agreement Lands include any Sub Area and a particular matter, right, vote, obligation or operation pertains solely to such Sub Area, this Operating Procedure shall apply to such Sub Area with respect to such particular item, as if such Sub Area comprised all of the Agreement Lands. In such event a Party which does not have a Working Interest in such Sub Area shall not have any rights or obligations with respect to such matter, right, vote, obligation or operation other than those which it specifically may have pursuant to this Operating Procedure by virtue of its status as a Related Party, and references to terms such as "Joint Account" Party, Non Operator and Management Committee" shall be construed accordingly.

3 02 Matters Pertaining To More Than One Sub-Area

A. Matters Pertaining To Agreement Lands Or Document Of Title In Entirety

If the Agreement Lands include any Sub-Area and a particular matter, right, vote, obligation or operation pertains to the Agreement Lands in their entirety or solely pertains to all of the Agreement Lands included in the Document of Title which includes such Sub-Area, the rights and obligations applicable to such matter, right, vote, obligation or operation shall be shared

Suppose that a well is being drilled to evaluate a prospect totally included in Sub Area 1 and that all of the interest owners therein elect to participate in that well. Since the operation pertains to a single sub area, the Article basically treats the Operating Procedure as if the other sub area did not exist with respect to that operation. C would drill that well for the joint account of itself and the non-operators in that particular sub area in the proportions of their interests therein, such that those parties would generally retain all rights and obligations with respect to that well. E & F would have no rights or obligations whatsoever with respect to that well, other than the right, in their capacity as related parties to be indemnified in the event they suffer a loss.

Subclause 3 02B Suppose that the parties have provided for a cost sharing mechanism where a prospect encompasses more than one sub area. Notwithstanding that the costs of a well to evaluate that prospect may be allocated among the parties having interests in the sub areas, there will be no cross-conveyance of interests.

In the event that it is intended to keep the well (if successful) for production purposes, there would have to be a corresponding adjustment of costs in the context of the particular fact situation.

Article 4 00 The reference to the management committee is actually a misnomer. Although the committee may initially comprise "management" personnel, the ultimate representatives will be operational personnel.

In addition, the authority of all but the most crucial matters would probably be delegated to the appropriate subcommittee (i.e., exploration, finance, insurance) in practice.

by the Parties in the proportions of their Average Interests or Average Document Interests as the case may be and references to terms such as Joint Account Party , Non Operator and Management Committee shall be construed accordingly

B Matters Pertaining To Specific Portion Of Agreement Lands

If the Agreement Lands include any Sub Area and a particular matter, right, vote obligation or operation pertains to a specific portion of the Agreement Lands other than as described in Clause 3 01 (Matters Pertaining Solely To Single Sub Area) and Subclause A of this Clause 3 02 the rights and obligations applicable to such matter right vote, obligation or operation shall be shared by the Parties in the proportions of their Operation Working Interests or such other proportions as the context may necessarily require as the case may be and references to terms such as Joint Account Party Non Operator and Management Committee shall be construed accordingly In the event of a dispute as to the manner in which such rights and obligations are to be shared among such Parties a Party may refer such matter to arbitration for resolution pursuant to Article 22 00 (Arbitration) This Subclause B however shall only apply to the drilling of a well if the penalty applicable to non participation with respect thereto is dependent on the determination of the Prospect to be penetrated by such well

3 03 Conduct Of Operations

Notwithstanding the provisions of Articles 5 00 (Appointment And Replacement Of Operator) and 6 00 (Functions And Duties Of Operator) if the Operator does not hold a Working Interest in the Sub-Area upon or with respect to which an operation is to be conducted and such operation will not utilize facilities, material or equipment held as Joint Property, such operation shall be conducted by the Party selected pursuant to Clause 5 04 (Appointment Of New Operator) by those Parties having a Working Interest in such Sub Area. Insofar as is required for the conduct of such operation, such Party shall have the same rights and obligations as the Operator, as prescribed herein

4 00 MANAGEMENT COMMITTEE

4 01 Creation And Structure Of The Management Committee

A. Creation Of Management Committee

A Management Committee, comprised of the representatives of each Party designated under Subclause B of this Clause 4 01, is hereby created to provide for the orderly planning of

Paragraph 4 01B(c) Management Committee approval of a well and the other specified operations is subject to ratification through the traditional A.F.E. process pursuant to Clause 4 06

activities to be conducted pursuant to this Operating Procedure and the consideration of other matters respecting such activities and the Agreement Lands

B Representatives And Alternates

- (a) Each Party shall, by notice to the other Parties designate one representative who shall be authorized to act for such Party and two alternates either of whom shall have full power to act for such Party pursuant to this Article 4 00 in the absence of such representative Such designations shall include the home addresses and telephone numbers of such persons in order to enable them to be contacted at all times Any Party may change its representative or any of its alternates at any time by giving notice to the other Parties In the event none of such personnel are able to represent a Party at a meeting of the Management Committee, such Party may designate another person to act as its representative at such meeting if written authorization to such effect is provided to the Operator prior to the commencement of such meeting
- (b) A Party may appoint any other Party's representative or alternate as its proxy to act on its behalf as its representative at any meeting or series of meetings of the Management Committee Such appointment of proxy shall be in writing and shall set forth the extent of the authority granted to the proxy holder Such proxy shall be effective if it is delivered to the representative of the Operator prior to the commencement of such meeting or the first of such meetings as the case may be
- (c) Subject to Clause 4 06 (Management Committee Decisions And A.F.E s), each representative shall have full power and authority to represent and bind the Party it represents at a duly constituted meeting of the Management Committee with respect to all matters or proposals which are within the powers and duties of the Management Committee and all acts done by such representative in such capacity shall be deemed to be the acts of the Party appointing such representative

C Advisors

Unless and to the extent that the Parties have previously agreed to restrict attendance to the representatives of the Parties with respect to the consideration of a specific item, a representative attending a meeting of the Management Committee may be accompanied by a reasonable number of advisors, and the chairman of the Management Committee may be accompanied by additional attendees to the extent reasonably necessary to record the minutes of such meeting or otherwise to assist with the conduct of such meeting

Subclause 4 01D Note that all references to the management committee are to be construed in the context of Article 3 00 The management committee with respect to any particular determination comprises only those parties which have a voting interest with respect to that matter

Suppose for example, that the motion pertains to the drilling of a joint well on Sub Area #1 This provision operates to ensure that the motion is determined by the parties having an interest in that sub area in the proportions of their interests therein

A party which does not have an interest in that sub area is not privy to that determination or the background information pertaining thereto

Paragraph 4 02B(b) i) Note that Clause 4 06 states that any decision of the management committee respecting the drilling of wells, geological, geophysical or geochemical operations or studies is contingent upon the approval of the related AFE through the normal AFE mechanism This enables a party which had voted to participate in a well at a meeting or through a mail ballot to change its position by refusing to approve the relevant AFE

Notwithstanding the general 15 day periods prescribed in this paragraph and 4 03C, it is undoubtedly in the operator's best interest to submit the AFE and the related information so that the 30 day period expires at about the same time as the meeting or the mail ballot response date

ii) As noted in Subclause 4 02D meetings conducted on short notice pursuant to subparagraphs (i) and (ii) may be conducted by telephone conference call, and votes pertaining thereto may be made by either telephone or telecommunication

D Management Committee And Sub Areas

Notwithstanding any other provision of this Article 4 00 in the event the Agreement Lands include a Sub Area each reference to the Management Committee herein shall mean only the representatives of those Parties which have a voting interest with respect to the specific matter to be discussed or determined as determined pursuant to paragraph 4 04C(d) (Voting Procedure)

4 02 Meetings Of The Management Committee

A. Management Committee To Meet At Least Annually

The Operator may convene a meeting of the Management Committee at any time it deems appropriate and it shall also promptly convene a meeting of the Management Committee at the request of a Non Operator Notwithstanding the foregoing sentence and Subclause 4 03C (Mail Ballots), the Management Committee shall meet at least annually to review the Forecast in accordance with Clause 6 10 (Forecasts)

B Notice Of Meeting And Agenda

- (a) The Operator shall give all Parties notice of the date, time place and purpose of a meeting of the Management Committee, accompanied by an agenda for such meeting and sufficient information to enable the Parties to consider beforehand the nature of the matters to be discussed at such meeting and to make an informed decision with respect to such matters
- (b) Such notice shall be given at least fifteen (15) days in advance of the date of such meeting, unless (and only insofar as) the Parties waive such notice requirement or such meeting is with respect to
 - i) the evaluation of a well where a Drilling Unit is then at the location of such well, the conduct of an operation described in Subclause 9 01B (Exception To Subclause A), a situation which the Operator considers to be an emergency or the consideration of a Supplementary A.F.E. pursuant to Subclause 6 01F (Non Drilling Supplementary A.F.E.s Referred To Management Committee), in which case a meeting of the Management Committee shall be held forthwith or
 - ii) the selection of an arbitrator pursuant to Subclause 22 02B (Management Committee To Select Arbitrator), in which case a meeting of the Management Committee shall be held within seven (7) days of receipt of such notice

Subclause 4 02D Remember that telephone notices are to be confirmed after the conversation pursuant to paragraph 18 01(d)

- (c) Each item to be determined by the Management Committee at such meeting shall be placed on the agenda for such meeting in the form of a motion for which a Party can vote either in the affirmative or in the negative. In the event any item is too complex to be so proposed, it may be presented as a series of motions, some or all of which may depend on the determination made with respect to the preceding motion.
- (d) Insofar as subparagraphs (b)(i) or (ii) of this Subclause B are not applicable, any Party shall have the right to require the Operator to place an item on the agenda for a meeting of the Management Committee, provided such item and sufficient information to enable the Parties to consider beforehand the nature of such item and to make an informed decision with respect thereto shall be furnished to the other Parties by such Party within five (5) days of receipt of the notice of such meeting.

C Chairman Of The Management Committee

The representative of the Operator shall preside as the chairman of the Management Committee.

D Place Of Meetings

All meetings of the Management Committee shall be held at the office of the Operator in Calgary or at such other place as the Parties may agree, provided that any meeting convened pursuant to subparagraph B(b)(i) or (ii) of this Clause 4 02 may be conducted by telephone conference call and that, notwithstanding Subclause 4 03C (Mail Ballots), any vote with respect thereto may be made by notice by either telephone or telecommunication.

E Quorum

Attendance of authorized representatives (including proxies) of the Parties sufficient to satisfy the voting threshold prescribed by paragraph 4 04C(a) (Voting Procedure) shall constitute a quorum for a meeting of the Management Committee. Subject to the procedural restrictions provided in this Article 4 00, the Management Committee shall be entitled to exercise all or any of the authorities, powers and discretions bestowed upon it hereunder at a meeting thereof if a quorum is present for such meeting.

4 03 Agendas, Minutes And Mail Ballots

A. Decisions Confined To Items In The Agenda

Subject to paragraph 4 02B(d) (Notice Of Meeting And Agenda) and Subclause C of this Clause 4 03, all decisions of the Management Committee shall be confined to items contained

Subclause 4 03C. 1) This provision is based on the mail ballot provision used in conventional unit agreements

11) A mail ballot is merely another form of a determination of the management committee. In the event an operation is proposed to be conducted for the joint account through a mail ballot and the management committee does not approve that operation, a party is free to propose that operation through the independent operation process

in the agenda for the meeting of the Management Committee at which such matter is decided. However, a matter not on the agenda for a meeting of the Management Committee may be decided upon at such meeting only if the representatives of all the Parties, whether in attendance at such meeting or not, agree that such matter shall be decided by the Management Committee at such meeting.

B Minutes

- (a) The Operator shall be responsible for the recording of the minutes of a meeting of the Management Committee. Such minutes shall be prepared and sent by the Operator to each Party as soon as is practicable, provided that such minutes shall be prepared and sent to the Parties forthwith in the event that the meeting to which such minutes pertain was conducted by telephone conference call. The minutes of such meeting shall include the names of the representatives present and the Parties they represent, any determination made by the Management Committee at such meeting and the results of any mail ballot conducted since the preceding meeting of the Management Committee.
- (b) Minutes of a meeting of the Management Committee shall be deemed to be correct as distributed, effective as of the date of such meeting, unless notice of errors or omissions therein is received by the Operator from a Party within twenty (20) days of the date on which they were received by the Parties. If notice of an error or omission is received by the Operator within such period, such minutes shall be presented to the Management Committee at the next meeting thereof for approval as drafted or for correction, provided that only those Parties present during the meeting to which such minutes relate shall be entitled to vote on such approval or correction.

C Mail Ballots

Any matter which is within the powers and duties of the Management Committee may be determined by the Management Committee without a Management Committee meeting if such matter is submitted by the Operator by way of notice to all of the Parties, provided that the Operator includes with such notice sufficient information respecting the matter to be so determined to enable the Parties to make an informed decision with respect to such matter. Each Party shall cast its vote with respect to such matter by written notice to the Operator within fifteen (15) days of the receipt of such notice, and the Operator shall advise the Parties of the results of such vote in a timely manner. However, such determination shall not be binding if a Party had objected to having such matter determined in such manner by notice to the Parties within five (5) days of the receipt of such notice.

Subclause 4 04B This is another provision which is only relevant in the event that ownership is heterogeneous

Suppose that the interests to the base of the N formation in a 20 section block are A, B C and D each as to a 25% interest and that the interests below the base of the N formation are A and B each as to a 50% interest How, for example, is the responsibility for rentals allocated among the parties with respect to a 20 section block?

For such purpose, the provision deems that the obligation will be borne by the holders of the deep rights in the proportions of their interests therein unless the section includes a potentially productive unit In that event the obligation would be assumed by the interest holders in the deepest potentially productive unit

The rationale for this mechanism is quite simple Where there is a potentially productive unit that portion of the section will generally be significantly more valuable than the other rights Where, on the other hand, no portion of the section has been demonstrated to include a potentially productive unit it will generally be much simpler from an administrative perspective to use the interests in the deep rights in such calculations

Subclause 4 04C In the event the management committee does not approve the conduct of an operation for the joint account, a party may propose that operation under the independent operations Article (See Clause 9 01)

4 04 Decisions Of Management Committee Conduct Of Votes

A. Affiliates As Single Entity

Notwithstanding any provision to the contrary contained herein, in the event that two or more Parties are Affiliates, they shall be regarded as a single entity for all voting purposes hereunder. If, pursuant to Clause 8 04 (Operator's Lien) or Clause 8 06 (Default Of Operator), a Party is precluded from voting with respect to a matter, any Affiliate of such Party which otherwise may have been entitled to vote with respect to such matter similarly shall be precluded from voting with respect to such matter.

B. Voting Interests Where Interests Vary Stratigraphically

In the event that the Working Interests of the Parties with respect to any Section of the Agreement Lands vary among the Geologic Units contained therein and a vote does not pertain specifically to any particular Geologic Unit or Sub Area, the Working Interests of the Parties in such Section for the purposes of the conduct of votes and the calculation of the Net Hectares, the Average Interests and the Average Document Interests of the Parties and the rights and obligations attributable thereto shall be deemed to be, unless the context otherwise requires, either

- 1) the Working Interests of the Parties in the deepest Potentially Productive Unit which has been demonstrated to be contained in such Section, or
- ii) the Working Interests of the Parties in the deepest of the Geologic Units contained in such Section in the event that no Potentially Productive Unit has been demonstrated to be contained therein,

Provided that in the event subsequently acquired information dictates that the deemed Working Interests described above are incorrect, the deemed Working Interests shall be adjusted accordingly at such time without any retroactive effect.

C. Voting Procedure

Subject to the provisions of this Clause 4 04, all matters to be decided by the Management Committee shall be determined as follows

- (a) Except as otherwise provided in this Clause 4 04 the Management Committee shall determine matters by the affirmative vote of _____ or more Parties holding Working Interests totalling _____% or more provided that no single Party shall have the power

Paragraph 4 04C(b) i) Some companies undoubtedly believe that several additional items (such as the approval of G&G operations) should be subject to the unanimous approval of the management committee. Since there is no consensus on the appropriate threshold applicable to such items, the paragraph has been structured so that additional items could be added to the matters requiring unanimous approval at the option of the individual consortium.

ii) Note the interrelationship between the unanimous approval requirement in this paragraph and paragraph 4 05(e). The specified list of items requiring less than unanimous approval can be expanded if the parties can agree unanimously on the expansion respecting that item. This is relevant with respect to items which were not contemplated at the time the agreement was finalized.

iii) If there are many parties and some hold very small interests, it may be desirable to include a third voting mechanism of 95%± for some items.

Paragraph 4 04C(c) i) The basic deemed affirmative principle is consistent with the provision which has traditionally been used in conventional unit agreements. However, an important modification to that principle has been included which provides that a failure to vote shall be deemed to be a negative vote where the matter is an item which requires the unanimous approval of the management committee. Since a voting procedure of this type is likely to be new to explorationists working on a project, this proviso was included to minimize the risk that exploration personnel unfamiliar with the deemed affirmative practice might assume that a failure to vote was generally deemed to be a negative vote.

ii) Note that this only pertains to the vote on a motion. A motion can be worded in the negative, i.e. not to drill a well to evaluate the Z prospect this year.

Clause 4 05 (General) i) Many of the specific powers listed in the clause could have been replaced by a simple catch all provision referring to matters specified to be determined by the management committee pursuant to the Operating Procedure. Those matters then could have been listed in a reference note.

The benefit of this change would be to shorten the document. The corresponding cost would be that casual users without access to the reference notes would have to review the entire document to determine the specific items which could be decided by the management committee. Since the only benefit in implementing this change would be cosmetic and there would likely be significant inconvenience to the users in the absence of these references, they have been retained.

ii) Note that the approval of a well or certain other operations by the management committee is subject to ratification pursuant to Clause 4 06.

Paragraph 4 05(a) The well evaluation program is covered by (n) and an extended flow testing program is covered by (g). The decision to suspend or abandon the well is addressed in (o).

Paragraph 4 05(b) The document provides that the determination of the prospect and operation working interests, if applicable, shall be determined by the unanimous approval of the management committee, with the right to refer the matters to arbitration in the event unanimous approval cannot be obtained. This would usually but not necessarily be determined in the context of an independent operation notice.

to defeat a motion unless such Party holds a Working Interest of fifty percent (50%) or more

- (b) Matters contained in paragraphs (a) (b), (c) (d) (e), (f), _____ of Clause 4 05 (Powers And Duties Of Management Committee) shall require the unanimous consent of the Parties. Failing such consent with respect to the matters described in paragraphs (b) (c) or (f) of Clause 4 05 a Party may refer such matter to arbitration for resolution pursuant to Article 22 00 (Arbitration)
- (c) Failure of a Party's representative to vote on a proposal shall be deemed to have been an affirmative vote by such Party with respect to such proposal and a Party which fails to send a representative or a proxy to a meeting of the Management Committee shall be deemed to have voted in the affirmative for all proposals determined at such meeting provided that in either event such Party shall be deemed to have voted in the negative where such matter requires the unanimous approval of the Management Committee. In recording the results of a vote or in the minutes of such meeting as the case may be such Party shall be listed as having failed to vote, abstained or been absent from such meeting as the case may be. Notwithstanding the foregoing portion of this paragraph (c), a Party which is not represented at a meeting of the Management Committee may vote on any matter on the agenda for such meeting by prior notice to the Parties
- (d) Notwithstanding paragraphs (a) and (b) of this Subclause C, in the event that the context requires that the determination in such paragraphs be based on an interest other than the Working Interests of the Parties such determination shall be based on the Average Document Interests the Average Interests the Operation Working Interests or such other interests of the Parties as the context may require. In the event of a dispute as to the interest which is the appropriate voting interest for a particular determination, a Party may refer such matter to arbitration for resolution pursuant to Article 22 00 (Arbitration)

4 05 Powers And Duties Of Management Committee

The Management Committee shall consider and decide upon the following matters

- (a) the location, timing and drilling of wells on the Agreement Lands, including the Deepening of wells
- (b) the determination of the Prospect and the Operation Working Interests applicable to a well which will evaluate a Prospect included in more than one Sub-Area, insofar as the forfeiture of interest applicable to non participation with respect to such well would be based on a determination of the Prospect,

Some agreements have provided that a prospect shall be determined through the normal less than unanimous approval of the management committee. That position has not been used in the document because of the risk that self interest could distort the determination.

As a single non participant holding a 15% interest, how confident could one be that the determination of a prospect by the participants would be reasonable where the objective, for example, is a complex faulted feature? Suppose the 15% interest holder were the only participant?

The fact that a number of parties deem a prospect to have a certain configuration does not mean that the determination is correct. A party having a minority interest should have the opportunity to prove that its position is correct.

This rationale also applies to paragraph (c).

Remember that a prudent operator would attempt to obtain agreement on the anticipated areal extent of a feature at an early date. This has not been specified in the document in order to provide the parties with maximum flexibility in making this determination.

Paragraph (e) This paragraph provides that a matter which is not prescribed in Clause 4.05 can only be determined through a less than unanimous vote if the parties unanimously agree to have that matter so determined.

The alternative whereby all matters which are not so prescribed are automatically determined through the voting procedure effectively allows the management committee to amend the agreement without the unanimous consent of the parties.

Paragraph (g) This paragraph applies to an extended flow test program. Because of the cost of this type of testing program, it is probable that many companies will prefer to add this paragraph to the list of matters requiring unanimous approval.

Paragraph (h) In practice, the authority of all but the most crucial matters would probably be delegated to the appropriate subcommittee: exploration, finance, insurance, etc. However, this is a decision to be made by each consortium.

Paragraph (j) It is arguably preferable to conduct these operations pursuant to less than unanimous approval of the management committee because of the practical fact that a non-participant is able to derive most of the benefit from such work in that it is free to participate in any resultant seismic program or drilling without penalty.

However, as some will object to a mechanism whereby they can be forced to participate in an operation through the dictate of the management committee, the parties can elect to include this item with those items requiring unanimous approval in paragraph 4.04C(b).

Paragraphs (k), (l), (m) and (n) The inclusion of these items in the section requiring less than unanimous approval may meet with opposition for the reason noted above.

The advantage of using the voting procedure with respect to these items is that it does not enable individual parties to hamstring operations.

The conduct of evaluation programs through less than unanimous approval is a generally accepted principle in international agreements.

The testing program described in the initial AFE is really only the operator's predicted testing program in the event that certain assumptions are accurate. The inconvenience of consultation with the non-operators does not outweigh the right of the non-operators to determine the appropriate evaluation of their interests. This view is consistent with Clause 901 of the conventional 1981 CAPL Operating Procedure.

- (c) the settlement of unresolved audit exceptions hereunder,
- (d) whether a dispute will be referred to arbitration pursuant to Subclause 22 01B (Certain Disputes To Be Referred To Arbitration By Management Committee),
- (e) any other matter which is not elsewhere provided for in this Operating Procedure which is subsequently to be determined by less than unanimous approval pursuant to paragraph 4 04C(a) (Voting Procedure)
- (f) the correction of a Schedule pursuant to paragraph 1 02B(b) (Revision Of Schedules)
- (g) the conduct of a testing program exceeding _____ days with respect to a well which had been drilled for the Joint Account
- (h) the establishment of such subcommittees as may be deemed appropriate and the powers of the Management Committee to be delegated thereto,
- (i) the approval or correction of minutes of a meeting of the Management Committee as provided in paragraph 4 03B(b) (Minutes)
- (j) the conduct of geophysical, geological and geochemical operations upon or respecting the Agreement Lands other than drilling operations and the site specific surveys relating thereto
- (k) the parameters for the conduct of site specific surveys respecting wells which have been agreed to be drilled for the Joint Account,
- (l) the conduct and parameters of environmental, socioeconomic and engineering studies pertaining to the exploration of the Agreement Lands other than studies required to be conducted as a prerequisite to the issuance of governmental approval pursuant either to the Regulations or the Documents of Title for the drilling of a well
- (m) the conduct and parameters of environmental socioeconomic or engineering studies related to the future development of the Agreement Lands including studies pertaining to the acquisition and installation of Production Facilities and the production processing and transportation of Petroleum Substances to the anticipated point of market
- (n) the evaluation of wells drilled for the Joint Account, including without limiting the generality of the foregoing, the logging, coring and initial testing program of such wells other than as described in paragraph (g) of this Clause 4 05,

Paragraph (u) Litigation is addressed in paragraph (ff) and Article 12 00

Paragraph (w) This includes such matters as the application for a discovery area and negotiations respecting the documents of title

- (o) the Suspension or Abandonment of wells drilled for the Joint Account,
- (p) whether the Operator has failed in the performance or satisfaction of its duties or obligations hereunder or has failed to rectify a default pursuant to paragraphs 5 02A(d) or (e) (Immediate Replacement Of Operator),
- (q) the timing of a change of Operatorship, the waiver of requisite Average Interest or Working Interest thresholds or direction with respect to the conduct of operations pending a change of Operatorship all as described in paragraphs 5 02B(a) and (b) (Delayed Replacement Of Operator)
- (r) the removal of the Operator pursuant to Clause 5 03 (Challenge Of Operator)
- (s) the selection of a successor Operator pursuant to Clause 5 04 (Appointment Of New Operator),
- (t) whether consent will be given to an assignment of Operatorship pursuant to Clause 5 05 (Assignment Of Operatorship),
- (u) settlement of a Third Person damage claim in excess of the amount prescribed by sub paragraph 6 01B(a)(ii) (Expenditure Limitations) if such claim is not covered by policies of insurance maintained for the Joint Account or is under the deductible limit thereof,
- (v) the approval of Supplementary A.F.E.s respecting Joint Operations pursuant to Subclause 6 01F (Non Drilling Supplementary A.F.E.s Referred To Management Committee),
- (w) the parameters within which the Operator has the right to act as the representative of the Parties pursuant to Clause 6 07 (Operator As Representative Of The Parties),
- (x) revisions to the types or amounts of insurance to be obtained for the Joint Account pursuant to Subclause 6 09B (Policies To Be Obtained For The Joint Account) or amendments to such policies,
- (y) the amount of a deductible to be included in a policy of insurance to be obtained for the Joint Account, subject to Subclause 6 09C (Deductibles),
- (z) the policies of insurance which a Party is required to maintain pursuant to Subclause 6 09G (Parties Responsible For Physical Damage To Property)
- (aa) the approval of Forecasts and revisions of Forecasts pursuant to Clause 6 10 (Forecasts)

Paragraph (dd) Note that this restriction only applies to the operator's right to take possession and sell a portion of the defaulting party's interest in the joint property

Paragraph (gg) The management committee may restrict the permitted disclosure of confidential information. It does not have the authority to lessen the confidentiality obligations prescribed therein. That would be an amendment of the agreement.

Clause 4.06 One issue which has to be considered carefully is the interrelationship of the approval of the management committee and the AFE process.

Assuming the AFE conforms to the information presented to the management committee, operational necessity requires that the decision of the management committee be binding with respect to matters where time is of the essence, such as a testing program.

Where, however, the parties are not subject to the same time constraints, as is generally the case with respect to the listed items, the operator should ensure that the parties have sufficient information on which to make an informed decision. It seems preferable, therefore, to provide that these types of decisions are subject to ratification through the traditional AFE process. Such a mechanism provides the operator with an incentive to supply the relevant AFE and background information at least 30 days before the meeting of the management committee at which that item is to be determined. It also ensures that the parties will not be required to commit to an operation without having had an adequate opportunity to review the relevant AFE.

Suppose that a party received an AFE for a well 10 days before a meeting of the management committee and that the party had agreed to participate in the well at the meeting of the management committee. The mechanism would enable that party to change its election by not approving the AFE with respect thereto within the prescribed time period (the succeeding 20 days in this example).

The response period would be shorter, of course, in the special short notice situations in Subclause 9.01B.

- (bb) whether the Operator will be permitted to enter into a contract requiring the approval of the Management Committee pursuant to paragraph 6 12A(b) (Contracts Awarded On A Prudent And Competitive Basis)
- (cc) the parameters for the registration of any copyright or application for patents respecting patentable processes, procedures or equipment arising out of Joint Operations
- (dd) the actions to be taken pursuant to paragraph 8 04B(c) (Operator's Rights) in the event of the default of a Party to pay any amount owing by it pursuant to this Operating Procedure
- (ee) whether to require the Operator to maintain funds held for the Joint Account in a separate trust account pursuant to Clause 8 07 (Commingling Of Funds)
- (ff) the parameters for the conduct of litigation being conducted for the Joint Account pursuant to Clause 12 01 (Conduct Of Litigation)
- (gg) whether and how to restrict the permitted disclosure of information pursuant to Clause 15 01 (Confidentiality Requirement), including the form of the covenant of confidentiality to be obtained from Third Persons to which information may be disclosed thereunder,
- (hh) whether to permit a press release pursuant to Clause 15 02 (Press Releases),
- (ii) whether the Operator is to forward a notice pursuant to Clause 21 01 (Classification As Delinquent Party),
- (jj) the selection of an arbitrator, subject to Subclause 22.02B (Management Committee To Select Arbitrator),
- (kk) the settlement of any questions or approvals required pursuant to the Accounting Procedure, subject to paragraph (e) of this Clause 4 05, and
- (ll) any matters respecting Joint Operations or the Agreement Lands which are under the sole discretion and control of the Operator, but for which the Operator desires advice

4 06 Management Committee Decisions And A.F.E.s

Unless waived by the Parties with respect to a specific expenditure, any decision of the Management Committee with respect to a matter described in paragraphs (a), (g) (j), (k), (l) or (m) of Clause 4 05 (Powers And Duties Of Management Committee) is contingent upon the approval of the related A.F.E. pursuant to Clause 6 01 (Control And Management Of Operations) by Parties holding the interest threshold prescribed by Subclause 4 04C (Voting Procedure) with respect to

Clause 4 07 Because of the impact of decisions of the committees and the possibility of disputes at a later date, it is imperative that a company develop a good internal communication system preferably coordinated by the relevant land person Committee minutes and motions should be maintained in a central filing system

Paragraph 5 02A(d) Note that the operator will not be provided with the opportunity to rectify its default if those obligations must be fulfilled at the time in order to protect life or property

the approval of such matter Except as provided in the foregoing sentence, any decision of the Management Committee shall obligate the Parties to execute the A.F.E. resulting therefrom provided such A.F.E. substantially conforms to the information on which such decision was based Approvals of any Supplementary A.F.E.s respecting A.F.E.s approved pursuant to this Clause 4 06 however shall in all cases be subject to the provisions of Clause 6 01

4 07 Procedures To Apply To Subcommittees

The provisions of this Article 4 00 pertaining to the composition and the procedures of the Management Committee shall apply mutatis mutandis to govern the composition and procedures of any subcommittee established by the Management Committee pursuant to this Article 4 00

5 00 APPOINTMENT AND REPLACEMENT OF OPERATOR

5 01 Assumption Of Duties Of Operator

The Operator named in the Agreement or any succeeding Operator appointed hereunder shall assume the duties and obligations of the Operator hereunder and shall have the rights of the Operator hereunder

5 02 Replacement Of Operator

A. Immediate Replacement Of Operator

The Operator shall cease to be Operator and a Non Operator shall become the Operator forthwith if the Operator

- (a) commits or suffers any act of insolvency, appoints a receiver, makes any general assignment for the benefit of creditors or allows any final judgement to be filed without recourse to further appeal whereby the Operator is required to hold, to dispose of or to convey its entire Working Interest in the Agreement Lands or the Documents of Title to or for the benefit of a Party or a Third Person
- (b) takes steps to dissolve liquidate or terminate its corporate existence, except in the case of a merger, amalgamation or corporate reorganization,
- (c) subject to Clause 5 05 (Assignment Of Operatorship), assigns or attempts to assign all or substantially all of its powers and obligations as Operator hereunder
- (d) fails in the performance or satisfaction of its duties or obligations hereunder or any of them, and does not commence to rectify such failure within thirty (30) days following

Paragraph 5 02B(a) i) The potential application of the management committee waiver in (a)(iii) is only relevant where the operator's average interest falls below 10% and there is an alternative operator which has a greater interest. The operator's interest is irrelevant as long as it retains either the greatest average interest or an average interest of at least 10%. Subparagraph (a)(iv) is an analogous provision.

ii) The percentage in (a)(iv) was arbitrarily chosen. It merely reflects the view that the operator should have a working interest in the majority of the lands it operates. Again, the point is only relevant in the event ownership is not homogeneous.

either a determination by the Management Committee that the Operator is in default or written acknowledgement by the Operator that it is in default or such lesser period as may be prescribed by the Regulations as the case may be, and thereafter diligently continue to remedy such failure, provided that the Operator shall in any event be replaced immediately where such obligations must be fulfilled at the time of such default in order to protect life or property, or

- (e) is determined by the Management Committee to have failed to prosecute diligently rectification of a default referred to in paragraph (d) of this Subclause A.

B Delayed Replacement Of Operator

- (a) The Operator shall cease to be Operator and a Non Operator shall become Operator if
 - i) the Operator tenders its resignation as Operator provided that an Operator may not resign as Operator without the consent of the other Parties unless it has been Operator for at least two years immediately prior to such proposed resignation
 - ii) the Operator is removed pursuant to Clause 5 03 (Challenge Of Operator),
 - iii) the Operator reduces its Average Interest to less than ten percent (10%), unless either the Management Committee waives this restriction or the Operator's Average Interest is greater than that of each of the other Parties at the time of such reduction, or
 - iv) the Operator does not hold a Working Interest in more than fifty percent (50%) of the Agreement Lands unless either the Management Committee waives this restriction or the percentage of the Agreement Lands in which the Operator retains a Working Interest is greater than that of each of the other Parties at the relevant time

In such case, the transfer of Operatorship shall be effective at 8 00 a m on the first (1st) day of the sixth (6th) calendar month next following the calendar month in which such event occurred unless the Management Committee designates a different date for the change of Operatorship

- (b) Notwithstanding paragraph (a) of this Subclause B, the Operator shall not commence a drilling operation pursuant to this Operating Procedure during the period described in such paragraph without the consent of the Management Committee, and, in the event that the Operator is conducting such a drilling operation at the time it would otherwise cease to be the Operator the Operator shall not cease to be the Operator with respect to such

Paragraph 5 02B(c) The reference to the challenging non operator is included because of the requirement that a challenging non-operator not be precluded from assuming operatorship pursuant to Subclause 5 02A or B (See Subclause 5 03D)

Subclause 5 02C This Subclause attempts to balance the interests of the operator and non operators in the event there is to be a change of operatorship

The non-operators require the security of being able to assume contracts which had been entered into for the joint account in order to minimize the disruption to the exploration of the agreement lands

At the same time, the operator wants to ensure that it will not be left with equipment and facilities it can no longer utilize and it will also want some protection for those of its employees who are surplus to its needs because of the change in operatorship

One difficult conceptual question, though, is the issue of contracts between an operator and its affiliate. An operator generally does not want a successor operator to have the right to utilize its services. Similarly a successor operator generally does not want to be obligated to use those services, particularly in the case in which the operator was replaced because of the nature and cost of the services it was supplying. Notwithstanding the general position that the non-operators should not be obligated to assume contracts between the operator and an affiliate, there may be particular circumstances in which the operator is supplying a drilling unit or other major equipment on very favourable terms. In cases where the operator is being replaced through the challenge mechanism, the potential loss of those contracts is another cost which would have to be considered when determining whether the challenge should be successful.

Clause 5 03 Generally, Clause 5 03 is much stronger than the generally accepted 1981 CAPL Operating Procedure type clause because it enables the non-operators to remove an operator against its will. Given the significant costs associated with the removal of an operator (particularly during the delineation phase), the most practical impact of this provision is to reinforce the operator's accountability for its performance. Note though, that special provisions should always be included in the joint operating agreement to which the Operating Procedure is attached in cases in which the operator has a dominant interest of more than 50%.

Although quite different from the traditional challenge mechanism, it should be remembered that the use of a voting procedure/no cause challenge mechanism is used in conventional unit agreements. U.K. joint operating agreements and the conventional AAPL Operating Procedure. The latter, though, does include a special feature where the operator holds a majority interest, in that cause is required for removal in such circumstances.

Subclause 5 03A. 1) If the challenger were limited to a challenge on the basis of being able to offer to conduct joint operations on "better" financial terms and conditions than the operator, the challenger would face a serious, if not insurmountable, obstacle. How could a challenger give any more than its best cost estimate when the costs of frontier exploration are a function of such factors as weather conditions, exploration success (testing costs), mechanical difficulties, the demand for exploration equipment, inflation and the whims of governmental agencies? A challenge on the basis of terms and conditions, therefore might in practice only be the right to challenge on the basis of overhead rates. Moreover, a challenge on the basis of financial terms and conditions ignores the consideration that the basis of a challenge may be the operator's technical, rather than cost performance.

Although the challenge notice is not required to contain any specific proposals respecting the anticipated impact of a change in operatorship, it is inherent in the process that the costs and benefits associated with a change would be discussed by the parties. The exclusion of the specific requirement is consistent with the comparable provision in unit agreements and simply reflects the position that the challenge mechanism should not be cluttered with formalities. There is little risk that a challenge would be made frivolously and only a minute risk that such a challenge could succeed.

ii) The time limitation has been left blank. While a two year restriction is probably appropriate for east coast operations a longer period is preferable for Beaufort projects.

operation until the Abandonment or Suspension of such well unless otherwise directed by the Management Committee

- (c) Notwithstanding subparagraphs (a)(iii) and (a)(iv) of this Subclause B in the event that an Affiliate of either the Operator or a Challenging Non Operator (as defined in Clause 5 03 Challenge Of Operator) holds a Working Interest in the Agreement Lands such Working Interest shall be deemed to be held by the Operator or the Challenging Non Operator as the case may be, for any determination pursuant to such subparagraphs

C Assignment Of Contracts, Materials And Personnel

In the event that the Operator is to be replaced pursuant to this Clause 5 02

- (a) a successor Operator shall give due consideration to the employment of any of the outgoing Operator s personnel who had been assigned to work for the Joint Account and who such outgoing Operator reasonably deems surplus to its needs because of such outgoing Operator s replacement as Operator and
- (b) the outgoing Operator shall use all reasonable efforts to transfer to the successor Operator, effective as of the effective date of the transfer of Operatorship, its rights as Operator under all contracts entered into pursuant to this Operating Procedure which are not with an Affiliate of such outgoing Operator and which relate exclusively to operations conducted (or to be conducted) pursuant to this Operating Procedure Such successor Operator shall assume all obligations of such outgoing Operator thereunder, unless such a contract or lease contains provisions for early termination In this event, such successor Operator may with the approval of those Parties other than the outgoing Operator and any Affiliate of such outgoing Operator terminate such contract or lease, with any damages or penalties respecting such termination being a charge for the Joint Account

5 03 Challenge Of Operator

A. Challenge

At any time after an Operator has been the Operator for at least _____ years hereunder, a Non-Operator (hereinafter referred to in this Article 5 00 as "the Challenging Non Operator") may give notice to the other Parties that it wishes the Operator to be replaced and that it is prepared to assume the Operatorship such notice hereinafter referred to in this Clause 5 03 as a Challenge Notice

Subclause 5.03B Once the nature of the challenge is determined, the major conceptual issue is the threshold of support required for a change in operatorship. The major alternatives are the approval of the management committee, the unanimous approval of the non-operators or the approval of the vast majority of the non-operators (i.e., non-operators holding 80-90% of the non-operators' interests). A unanimity requirement would present obvious problems if there were Parties holding minute interests. Similarly, there is obvious scope for abuse where two parties holding a 20% interest could remove an operator having an 80% interest. A management committee threshold has been selected because it would usually equate to an 80-90% non-operator threshold in practice.

Given that the provision should not be used when the operator holds a majority interest, the real question, then, is not whether the operating procedure provision is always appropriate, but whether it is appropriate for the general case in which an operator is the largest interest holder, with an interest of, for example, 35%.

Assuming that the operator does not have a dominant interest and that there are four non-operators, the implications of a normal voting procedure (3 parties/65% interest) versus a non-operator voting procedure (85% of non-operators' interest) are indicated in the following table:

<u>Operator's Interest</u>	<u>Normal Voting Procedure (3 parties/65% interest)</u>	<u>Non Operator Voting Procedure (85% of Non Operators Interest)</u>
A 45%	Unanimity - special no one party veto provision	46.75%
B 50%	Unanimity - as above	51%
C 35%	Unanimity - 65%	55.25%
D 30%	3 parties - 65%	59.5%
E 25%	3 parties - 65%	63.75%
F 20%	3 parties - 65%	68%
G 15%	3 parties - 65%	72.25%

As can be seen from this table, the support required for the removal of an operator is inversely related to the magnitude of the operator's interest when one uses the 85% non-operator threshold. It is easier for the non-operators to remove an operator having a 45% interest than it is to remove an operator having a 15% interest. This is an unusual result when the underlying policy of the challenge mechanism is to provide an effective mechanism for the removal of an operator, while providing reasonable protection for the operator against frivolous challenges.

Subclause E. This Subclause addresses the contentious issue of compensation for a replaced operator, and is consistent with the standard practice in the United Kingdom.

Should an operator receive compensation if the non-operators have not thought enough of its performance to allow it to remain as operator?

On the other hand, is it appropriate that a party which is prepared to assume the obligations of operatorship face the risk that it will suffer a pecuniary loss for having assumed those responsibilities?

In the event that there is a dispute respecting the reasonableness of costs being charged by the outgoing operator, the issue can be referred to arbitration pursuant to Subclause 22.01A.

Modifications of Terms and Conditions

A modification of terms and conditions provision similar to Clause 205 of the conventional 1981 CAPL Operating Procedure has not been utilized.

Given the technical resources of an operator and, on occasion, its ownership of specialized equipment, it is unlikely that a non-operator would be prepared to challenge an operator on this basis. In practice, therefore, the operator could generally use the mechanism to increase its rates without any real threat of being replaced.

B Management Committee To Determine
Whether Operator To Be Replaced

Following receipt of a Challenge Notice the Operator shall promptly convene a meeting of the Management Committee to be held not earlier than forty five (45), and not later than sixty (60) days following receipt of such Challenge Notice to determine whether the Challenging Non Operator shall assume the Operatorship in the place of the Party then acting as the Operator Notwithstanding the foregoing sentence, such challenge shall be deemed to have been rejected by the Management Committee if Parties holding the Working Interest threshold required to reject such challenge have, by notice advised the Parties prior to such meeting of their intention to vote against such challenge

C Assumption Of Operatorship

If the Management Committee determines that the Challenging Non Operator shall assume the Operatorship, the Challenging Non Operator shall become Operator at the time determined pursuant to Subclause 5 02B (Delayed Replacement Of Operator)

D Restriction On Assumption Of Operatorship

Notwithstanding the foregoing Subclauses of this Clause 5 03, the Challenging Non Operator shall be precluded from assuming the Operatorship if at the time such Party were to assume the Operatorship such Party would be subject to replacement pursuant to either Subclause 5 02A (Immediate Replacement Of Operator) or Subclause 5 02B (Delayed Replacement Of Operator)

E Compensation For Replaced Operator

Subject to Clause 22 01 (Submission Of Certain Matters To Arbitration), if the Challenging Non Operator becomes the Operator pursuant to this Clause 5 03, the outgoing Operator shall be compensated for all reasonable costs and expenses directly associated with or attributable to its removal as Operator, provided that the outgoing Operator shall diligently attempt to minimize such costs and expenses Such compensation shall be a charge for the Joint Account

Subclause 5 04D The operator would retain not only such wells, but also that portion of the joint property required to fulfil its obligation

5 04 Appointment Of New Operator

A. Management Committee To Appoint

In the event that an Operator resigns or is to be replaced, a new Operator shall be appointed by the Management Committee, subject to Clause 5 03 (Challenge Of Operator) and Clause 5 05 (Assignment Of Operatorship)

B Failure To Appoint Successor Operator

No Party shall be appointed Operator pursuant to this Clause 5 04 unless it has given its written consent to such appointment. However if the Parties fail to appoint a successor Operator, the Non Operator having the greatest Average Interest (and if more than one the one chosen by lot between or among them) shall act as Operator pro tem, with the right should a similar situation reoccur after a new Operator has been appointed, to require the Non Operator having the next greatest Average Interest to act as Operator pro tem, and so on as occasion demands. Notwithstanding the foregoing sentence in the event that an Affiliate of a Party holds an interest with respect to the Agreement Lands such Parties shall be deemed to be one Party for the purpose of this Subclause B, and the Average Interests of such Parties shall be deemed to be held by the one of them which has the greatest Average Interest.

C Restriction On Appointment

No provision of this Clause 5 04 shall serve to reappoint as the successor Operator a Party which has been replaced pursuant to Subclause 5 02A (Immediate Replacement Of Operator) or Subparagraph 5 02B(a)(ii) (Delayed Replacement Of Operator) except with the consent of the Parties

D Transfer Of Property

At the effective date of the resignation or replacement of the Operator the outgoing Operator shall deliver to the successor Operator possession of the Joint Property, the books and records kept for the Joint Account and all documents, agreements and other papers relating thereto. However, such delivery of Joint Property shall not apply insofar as it pertains to any well to which paragraph 5 02B(b) (Delayed Replacement of Operator) applies until the Abandonment or Suspension of such well, and any wells in respect of which such successor Operator is not entitled to information which shall be operated by a Party determined pursuant to this Clause 5 04 until such successor Operator becomes entitled to such information

Subclause 5 04E. The outgoing operator remains responsible for the unsatisfied duties and obligations which had accrued to it, insofar as it remains able to fulfil those obligations after having transferred the joint account records and the other joint property

Subclause 5 04F The Subclause merely specifies that the audit shall be conducted at a certain time. The provisions of the Accounting Procedure otherwise apply to the audit, including the resolution of discrepancies disclosed by the audit

Clause 5 05 i) Suppose the operator assigns its working interest. This Clause addresses the assignment of the operatorship so that the rights of the non-operators are clear. The only practical scope for this provision is in the case the operator proposes to assign to a company with dubious financial viability or questionable technical expertise. If there is to be no anticipated impact on joint operations, as would generally be the case if operatorship were being assigned through a corporate reorganization from ABC Ltd. to ABC Resources Inc., the purported assignment would not be rejected by the management committee in practice. If the parties were sufficiently disillusioned with that operator's performance they presumably would have used their other rights to remove the operator

ii) Suppose ABC Ltd. assigns to ABC Resources Inc. Since ABC Resources Inc. is a distinct entity from ABC Ltd. and a new operator, the two year periods in 5 02B(a)(i) and 5 03A would begin to run from the effective date of the change of operatorship in the absence of the last sentence

Clause 6.01 i) Remember that all references to working interests must be read in the context of Article 3 00 pertaining to sub areas

ii) Note that the Clause does not include any provision respecting the purchase of materials. This is addressed by Clauses 206 and 403 of the PASC Frontier Exploration Accounting Procedure

Clause 6.01A. i) The Operator's management of operations and joint property is expressly subject to the supervision and control of the management committee. However, subject to specific restrictions, the operator must have significant latitude in the conduct of operations.

ii) As noted in Subclause 6 18B, the operator is an independent contractor

Paragraph B(a) i) Subparagraph (a)(i) differs from the traditional discretionary authority provision in that it expressly precludes the operator from using the authority to conduct an operation

E Release Of Former Operator

Upon compliance with the obligations described in Subclause D of this Clause 5 04 the outgoing Operator shall be released and discharged from and the successor Operator shall assume, all duties and obligations of the Operator Notwithstanding such release or discharge however, such outgoing Operator shall continue to remain responsible for the unsatisfied duties and obligations which had accrued to it prior to the effective date of the change of Operatorship, insofar as such outgoing Operator remains reasonably able to fulfill such obligations following the transfer of the Joint Property

F Audit

Within sixty (60) days after the successor Operator has obtained possession of the Joint Property from the outgoing Operator hereunder, an audit shall be made of the books of account and records of the Joint Account and an inventory shall be taken The cost of such audit and inventory shall be for the Joint Account

5 05 Assignment Of Operatorship

Notwithstanding the provisions of Article 20 00 (Disposition Of Interests) in the event the Operator wishes to assign the Operatorship to its assignee after having disposed of all or a portion of its interest in the Agreement Lands pursuant to that Article, such assignee shall not assume the Operatorship unless and until the Management Committee approves such assignment of Operatorship Should the Operatorship be so assigned, the two (2) year time periods described in this Article 5 00 shall be calculated as if the aforementioned assignment had not occurred

6 00 FUNCTIONS AND DUTIES OF OPERATOR

6 01 Control And Management Of Operations

A. General

Subject to the provisions of this Operating Procedure and the supervision and control of the Management Committee, the Operator is delegated the control and management of the Joint Property and all operations and other activities conducted hereunder with full power and authority to take whatever action may be necessary and to make such expenditures as may be authorized to conduct operations and activities pursuant to the provisions hereof

B Expenditure Limitations

(a) The Operator may, without approval of the Non Operators, charge to the Joint Account

The rationale for the restriction is apparent though when one examines the purpose of Clause 301 of the conventional CAPL Operating Procedure. In essence, that provision is included in order to enable an operator to make those minor capital expenditures which, in the course of normal day to day operations are required to maintain production. If, for example, a new \$10 000 piece of wellsite equipment were required, the operator would not have to wait for the approvals of the parties before making the purchase, such that the disruption to production would be minimized.

ii) The amounts in the paragraph have been not been specified. They should be a negotiated item because of the differences in operating conditions and costs.

Notwithstanding that they will be negotiated, it should be recalled that the purpose of the discretionary authority is to enable an operator to make minor capital expenditures and to settle minor legal claims. This is quite different than providing the operator with the authority to make expenditures or settle claims which are minor only in the context of the costs of an operation. Does one for example really anticipate a multitude of uninsured claims between \$50 M and \$250 M with respect to an offshore well?

The fact that it may be inconvenient for the operator's personnel to comply with financial restraints does not diminish the non-operators' need for meaningful financial control. If a party holds a 25% interest, there is no apparent difference on a party's balance sheet between the impact of a \$200 M legal claim pertaining to a well in the southern NWT and one with respect to an east coast well, even though the initial reaction might be to use significantly different limits in the respective agreements.

iii) Since a settlement without the permission of the insurer could jeopardize the recovery from the insurer, the permissible authority in subparagraph (ii) only applies to settlements which are under the deductible limits of the insurance or are not covered by insurance maintained for the joint account.

iv) Note that there is no specific requirement for the operator to submit an itemized report of such expenditures to the parties, other than insofar as such information is normally required pursuant to Clause 102 of the PASC Frontier Exploration Accounting Procedure. The only formalized review mechanism as such would be in the case where a non-operator were so concerned by the operator's tendency to make such expenditures that it has the matter included on the agenda for a meeting of the management committee.

Paragraph B(b) It is possible that certain operations may be conducted for the joint account with less than unanimous approval, insofar as the parties have so elected pursuant to Subclause 4.04C. Other operations, such as drilling, will always require unanimous approval for expenditures to be incurred for the joint account. If an operation is not to be conducted for the joint account in accordance with the thresholds prescribed by Article 4.00, the independent operations article would apply.

ii) The traditional 10% permissible overrun is utilized in the document. Given that the draft 1988 AAPL Operating Procedure uses 25% in the comparable provision, there may be a broader acceptance of an increased limit in the future.

iii) The legal nature of the approval of an AFE is considered in the discussion of Supplementary AFE's. Notwithstanding the procedures specified in the document with respect to overexpenditures and the general legal principle that a party's approval of an AFE signifies that party's authority for the operation, a party may be entitled to relief in other circumstances. If an operator had been fraudulent or grossly negligent in the preparation of its cost estimate or, if in the period between the issuance of the AFE and the commencement of the operation, the operator realizes that actual costs will differ significantly from its cost estimate, a party may have a remedy at law in addition to the rights prescribed by the Operating Procedure.

(iv) The operator's right to request a special advance in an emergency is addressed in Subclause 8.03B.

(v) The most practical applications of subparagraph (iii) are in the cases in which clean up operations are required or operations are required before the well can be abandoned. This type of provision also would have applied to drilling orders issued under legislation in the form of the Canada Oil and Gas Act, where the operator was open to criminal prosecution if it failed to comply with a drilling order but such a provision was not included in the Canada Petroleum Resources Act.

- 1) the actual cost to the Operator of any single undertaking (other than the conduct of any drilling, geological geophysical or geochemical operation or any engineering environmental or socioeconomic study) in accordance with this Operating Procedure provided the estimated cost of such undertaking does not exceed \$ _____ 000, and
 - ii) the actual cost to the Operator of settling any Third Person damage claim resulting from Joint Operations if such claim is not covered by policies of insurance maintained for the Joint Account or is under the deductible limit thereof, provided such cost does not exceed \$ _____ 000
- (b) The Operator shall not charge to the Joint Account any costs or expenses in excess of the amounts specified in paragraph (a) of this Subclause B unless
- i) the Parties satisfying the applicable approval thresholds prescribed by Article 4 00 (Management Committee) have given their prior consent to such a charge in the form of an approved A.F.E., in which case the Operator may charge to the Joint Account costs and expenses that do not exceed the total amount specified in such A.F.E., plus ten percent (10%) of the amount so specified therein, subject to the proviso in paragraph G(a) of this Clause 6 01, or
 - ii) the Operator reasonably determines that an emergency exists, in which case the Operator may charge to the Joint Account, without the Parties prior approval, such costs and expenses as the Operator reasonably determines are necessary and proper for the protection of life or property, provided, however, that the Operator shall immediately notify the Parties of the details of such emergency and such costs and expenses or
 - iii) the Operator is required to conduct an operation respecting the Agreement Lands by the Regulations, where failure to conduct such operation would be inconsistent with good oil field practice or could result in the prosecution of the Operator thereunder in which case the Operator shall conduct such operation for the Joint Account, unless the Parties make arrangements whereby such operation shall be conducted other than for the Joint Account, or
 - iv) the Parties have given their prior consent to such a charge in the form of an approved Supplementary A.F.E., in which case the Operator may charge to the Joint Account costs and expenses that do not exceed the amount specified in such Supplementary A.F.E.

Subclause D Certain decisions may be made outside the normal 30 day approval process under Article 4 00 and paragraph 9 03B(b) The most practical examples would be the approval of a well evaluation program or a deepening where a rig is on location

Subclause E 1) In the absence of a specific provision in an agreement, has a party which has agreed to participate in an operation elected to pay its proportionate share of the cost of that operation or is its participation conditional on the actual cost of such operation corresponding to the estimate?

As evidenced by American jurisprudence and the leading Canadian case of Renaissance Resources Ltd v Metalore Resources Ltd, [1984] 4 W W R 430 (Alta Q B) affirmed, [1985] 4 W W R 673 (Alta C A) the general legal rule is that the approval of an A.F.E. constitutes the authority of a party for the operator to conduct the operation described in the A.F.E., notwithstanding that the actual cost may differ from the operator's estimate There may be an exception to this rule, though, where a party can establish that it is a passive investor with no expertise which relied on the operator's estimate with the knowledge of the operator

The document includes a provision whereby a Supplementary A.F.E. is required for a 10% overexpenditure above the A.F.E. estimate However, it does not deviate even further from the general legal rule to provide that a Supplementary A.F.E. is required when there is a lesser prescribed overexpenditure such as \$5 MM A party which elects to participate in a \$60 MM well must recognize at the time it elects to participate in the well that there is a significant risk that the well might ultimately cost \$65 MM

ii) Subclause 6 17C requires the operator to provide the non-operators with daily estimates of well costs However, there will undoubtedly be instances in which it will not be possible to forecast costs accurately in advance and it is understandable why an operator may object to a provision whereby additional costs covered by the Supplementary A.F.E. cannot be charged to the joint account until approved.

Suppose, though, that the onus were reversed. What motivation would there be for an operator to attempt to provide reasonably accurate cost forecasts to the non-operators in a timely manner?

The provision attempts to balance the needs of the operator and the non-operators While the provision admittedly places the onus on the operator to forecast costs in an timely manner, this is balanced by the requirement that the non-operators respond promptly to the Supplementary A.F.E

Non-drilling Supplementary A.F.E.'s generally have a response period of 5 days with a deemed affirmative provision where a party fails to vote (Subclause F and Clause 4 04) Paragraph G(b) applies to drilling and provides that failure to respond within 5 days of receipt is deemed to be the approval of a party

There are inherent difficulties in accurately determining costs on a current basis However, an operator will almost certainly be conducting a manageable number of frontier projects at any point in time Notwithstanding Subclause 6 17C, it is also probable that the operator's internal control mechanisms will require it to estimate accrued costs on a current basis The minor inconvenience in sharing this information with the non-operators in a timely manner does not seem to outweigh the non-operators' need for the operator's fiscal accountability

While the prescribed mechanism may present problems where an operator has not advised the non-operators of an overrun until after the fact, an operator which finds itself in that position will generally be the author of its own misfortune

Subclause F 1) This Subclause delegates fiscal control with respect to certain overexpenditures to the management committee If the management committee approves a Supplementary A.F.E., those parties taking the minority view continue to pay their share of such costs

This mechanism attempts to balance the need of the non-operators for the fiscal accountability of the operator with the parties desire for orderly exploration.

ii) Although this Subclause does not apply to the drilling of a well, it applies to the testing of that well Assuming that the testing of a well will usually be conducted by the less than unanimous approval of the management committee, it would be inconsistent to provide that the approval of a Supplementary A.F.E. respecting that work would necessarily require unanimous approval

C A.F.E s And Supplementary A.F.E s To Be In Sufficient Detail

Every A.F.E and Supplementary A.F.E shall describe the undertaking relating thereto and the estimated cost thereof in sufficient detail to enable the Party receiving such A.F.E or Supplementary A.F.E to appreciate the nature and scope of such undertaking and the estimated costs of its various phases

D Approval Of An A.F.E

A Party shall be deemed to have elected not to approve an A.F.E if within thirty (30) days of the receipt thereof it has not signed and returned a copy of such A.F.E to the Operator or provided the Operator with a notice that it approves such A.F.E subject to Article 4 00 (Management Committee) and paragraph 9 03B(b) (Reply To Independent Operation Notice)

E Supplementary A.F.E s General

Subject to subparagraphs B(b)(ii) and B(b)(iii) and paragraph G(a) of this Clause 6 01

(a) when it becomes apparent to the Operator that the cost of an undertaking described in this Clause 6 01 is reasonably anticipated to exceed by more than ten percent (10%) the expenditure level specified in the A.F.E relating to such undertaking a Supplementary A.F.E shall be forwarded forthwith by the Operator to the Non Operators, together with the Operator's explanation for such anticipated overexpenditure and

(b) the Operator shall not charge to the Joint Account the costs specified in a Supplementary A.F.E relating to an undertaking unless and until the Parties have approved such Supplementary A.F.E and the Operator shall not charge to the Joint Account any costs in excess of those specified in such Supplementary A.F.E unless and until the Parties have approved a subsequent Supplementary A.F.E pursuant to this Clause 6 01

F Non Drilling Supplementary A.F.E s Referred To Management Committee

Subject to subparagraphs B(b)(ii) and B(b)(iii) of this Clause 6 01 and insofar as a Supplementary A.F.E is not with respect to the drilling of a well, the approval of such Supplementary A.F.E shall be a determination of the Management Committee The Operator may refer such Supplementary A.F.E to the Non Operators for determination pursuant to Subclause 4 03C (Mail Ballots), provided that the time period within which the Non Operators shall respond pursuant thereto shall be reduced to five (5) days from the receipt of such notice Notwithstanding the foregoing sentence a Non Operator may within three (3) days of the

Subclause G- International agreements generally do not enable a party to opt out of an approved operation in the event of cost overruns stating instead that a party is obligated to pay its share of all costs of an approved operation. Although such agreements occasionally include a requirement to issue a Supplementary A.F.E. it is usually clear that this is for informational purposes only.

This Operating Procedure deviates from that practice because of the potential magnitude of cost overruns in our operating environment. In essence, this Subclause allows an individual party to opt out of a well beyond an overexpenditure of 10%. In this event, further drilling will be treated as an independent deepening for penalty purposes.

There is one important point to note about this mechanism, namely that the party which so opts out of further drilling is not released from its share of well evaluation costs applicable to the joint interval.

Paragraph (a) Note the exclusion of evaluation costs at the end of the paragraph. Paragraph G(d) provides that a participant in the uphole portion of the well remains responsible for the evaluation of the joint interval of the well. Unless that portion of the costs applicable to such work is excluded in such calculation, that party would be responsible for both the testing costs and an additional share of drilling costs.

Paragraph (b) i) As noted above, the independent deepening penalty would apply in the event that a party assumed the share of costs of a party which elected not to approve the Supplementary A.F.E. The obligation to supply the non-operators with a description of the penalty which would be attributable to non-participation in the continued well would require the operator to provide its best estimate of the point when approved funds will be expended.

ii) From the perspective of an operator, a 5 day response period may seem extremely long where the operator has failed to advise the non-operators of an anticipated overrun in a timely manner.

As noted previously, though, the operator generally should be in a position to provide a cost forecast in a timely manner, such that a prudent operator should be able to avoid difficulty.

The most likely result of a shorter response period would be that the operator's personnel would tend to provide the information at the latest required date, simply because there would be no incentive to provide it earlier.

Although unlikely to occur in practice, another important factor to recall is that a shorter response period may provide the operator with an incentive to delay providing a Supplementary A.F.E. to the non-operators where the prospect is attractive and there is a perception that a non-operator may be unable to obtain either financing or approvals within the shorter period.

Paragraph (c) Note that the 2 day period is predicated on the operator having issued the Supplementary A.F.E. in a timely manner. If standby costs are being incurred, the parties would make this decision as quickly as is feasible.

receipt of such notice request that the Operator convene a meeting of the Management Committee to discuss such Supplementary A.F.E. in which case the Operator shall convene a meeting of the Management Committee forthwith

G Approval Mechanism For Supplementary A.F.E.s Drilling

- (a) Subject to subparagraphs B(b)(ii) and B(b)(iii) of this Clause 6 01 and insofar as a Supplementary A.F.E. is with respect to the drilling (but not the testing) of a well the approval of such Supplementary A.F.E. shall be pursuant to the provisions of this Subclause G, provided that the estimated or actual costs, as the case may be, of testing such well shall not be considered when calculating the ten percent (10%) threshold prescribed by subparagraph B(b)(i) of this Clause 6 01
- (b) In the event the Operator forwards such a Supplementary A.F.E. to the Non Operators it shall provide therewith its description of the forfeiture of interest attributable to an election not to approve such Supplementary A.F.E. if such well were to be continued by less than all of the Parties such description including the Operator's best estimate of the point at which the amount described in paragraph (a) of this Subclause G will be expended Within five (5) days (excepting Saturdays, Sundays and statutory holidays in either the Province of Alberta or Canada) following the receipt of such Supplementary A.F.E. and such description, each Non Operator shall sign and return such Supplementary A.F.E. to the Operator, otherwise advise the Operator by notice that it approves such Supplementary A.F.E. or advise the Operator by notice that it will not approve such Supplementary A.F.E. and that it elects not to participate in such well beyond the amount specified in the initial A.F.E. (insofar as such amount does not pertain to the estimated or actual cost of testing such well), plus the additional amounts provided for in subparagraphs B(b)(i), (ii) and (iii) of this Clause 6 01 Failure of a Non Operator to reply to the Operator within the aforesaid five (5) day period shall be deemed to be such Party's approval of such Supplementary A.F.E.
- (c) Notwithstanding the provisions of Article 9 00 (Independent Operations), in the event that less than all of the Parties approve such a Supplementary A.F.E., those Parties approving such Supplementary A.F.E. shall have the right for two (2) days following the aforesaid five (5) day period in which to elect to continue drilling the well to which such Supplementary A.F.E. relates Paragraph 9 03C(b) and (c) (Determination Of Participating Interests) shall apply mutatis mutandis to such election, and Subclause 9 05C (Penalty For Independent Deepening) shall apply mutatis mutandis if such Parties elect to continue drilling such well, as if such Supplementary A.F.E. related to the independent Deepening of a well

Paragraph 6 01G(d) Remember that a party which participated in the uphole portion of the well is also applicable for its share of the abandonment costs of that interval pursuant to Subclause 9 08G

Clause 6 02. Note that the provision requires the operator to supervise its contractors to a reasonable degree This raises the question of the operator's legal responsibility for the actions of a contractor

An operator generally should not be required to assume responsibility for simple negligence as is provided in Article 7 00 The last phrase is included to ensure that the obligation to supervise contractors does not alter the operator's general legal responsibility for losses

Clause 6 03 Although the provision does not specifically refer to microfiche, microfilm and other electronic records, the phrase "books, records and accounts" is broad enough to include records in those forms Since auditors would have access to the records in whichever form they are maintained it is inappropriate to specify an operator's record keeping procedures in the document

- (d) Subject to Subclause 9 08G (Allocation Of Well Costs When Participation In Well Differs) a Party rejecting such a Supplementary A.F.E shall not be responsible for additional Well Costs incurred after the expenditure of the amount approved in the A.F.E respecting such well (insofar as such amount does not pertain to the estimated or actual cost of testing such well) and the additional amounts provided for in subparagraphs B(b)(i), (ii) and (iii) of this Clause 6 01 Notwithstanding the foregoing sentence, such Party shall remain responsible for its Working Interest share of the cost of any testing program which is conducted pursuant to the direction of the Management Committee with respect to that portion of such well which had been drilled for the Joint Account

6 02 Operations Conducted In Proper Manner

The Operator shall conduct all Joint Operations diligently in a good and workmanlike manner in accordance with good oil field practice and in compliance with the Documents of Title and the Regulations Insofar as the Operator hires contractors to conduct any part of a Joint Operation the Operator shall supervise such contractors to the extent reasonably necessary to ensure that such contractors conduct their work in the same manner provided that the Operator's responsibility for such supervision shall be governed by the provisions of Article 7 00 (Indemnity And Liability Of Operator)

6 03 Books And Records

The Operator shall, with respect to all Joint Operations keep and maintain in Canada true and correct books records and accounts showing credits and charges for the Joint Account, evidence of all payment of claims and accounts and Joint Operations conducted The Operator shall, upon request of a Non Operator, permit each Non Operator during normal business hours to inspect such books, records and accounts in either the Operator's office in Calgary or its field office serving the Agreement Lands and to make extracts or copies therefrom and thereof, and to audit the Operator's accounts and records as provided in the Accounting Procedure

6 04 Protection From Liens

The Operator shall pay, or cause to be paid as they become due and payable all accounts of contractors and claims for wages and salaries for services rendered or performed and for materials supplied with respect to the Agreement Lands or any Joint Operations The Operator shall keep the Agreement Lands free from liens and encumbrances resulting therefrom unless there be a bona fide dispute with respect thereto

Clause 6 05 Remember that Article 3 00 applies to ensure that only non operators having an interest in the relevant lands have this right

Subclause 6 06A The operator may be required to submit promissory notes or other forms of financial responsibility to governmental authorities. In such event the operator may wish to secure each party's working interest share of that responsibility by having the parties submit promissory notes to the operator. Paragraph (a) enables the operator to obtain such security in that manner which is approved by the parties pursuant to the Accounting Procedure [See also paragraph 4 05(kk)]

This approval mechanism attempts to balance the operator's need for security with the non operators' need for certainty, and enables the parties to develop the procedure appropriate for their particular fact situation

Subclause B 1) Note that this Subclause does not penalize a party which does not participate in the work which entitles the Operator to recover the rentals, deposits, etc., such that a non participant would recover that share of the levy contributed by it. While arguably an inequitable result, the alternative whereby the amount recovered is shared by the participants would be extremely complex, since it would have to address such matters as the effect of similar operations, non participants which do not have an interest with respect to the lands to which the expenditures pertain and participants which have a greater interest in other portions of the lands.

Given that most companies will occasionally gain by the provision and that there will be other times when they will suffer because of it, the net impact should probably be minimal in the long term.

ii) Clause 201 of the 1986 PASC Frontier Exploration Accounting Procedure addresses the submission of such amounts or instruments.

6 05 Non Operator s Rights Of Access

The Operator shall permit the duly authorized representatives of a Non Operator full and free access to the Joint Property (including a Drilling Unit) for the observation of Joint Operations at such Non Operator s sole risk cost and expense, provided that the Operator has received reasonable notice of such Non Operator s intention that such representatives are in reasonable numbers and that with respect to access to a Drilling Unit the Operator is satisfied that there will be adequate accommodation for such representatives

6 06 Maintenance Of Documents Of Title

A. Maintenance

Except as otherwise provided in this Operating Procedure the Operator shall on behalf of the Parties and for the Joint Account maintain the Documents of Title in good standing pursuant to the terms thereof or the Regulations through

- (a) the submission of required rentals deposits promissory notes and similar forms of financial responsibility to governmental authorities provided that the Operator may secure each Party s Working Interest share of such financial responsibility in such manner as may be approved pursuant to the Accounting Procedure and
- (b) the performance of all other acts reasonably necessary to maintain the Documents of Title in good standing and in full force and effect, provided that subject to subparagraph 6 01B(b)(iii) (Expenditure Limitations) nothing in this paragraph (b) shall be construed to require or permit the Operator to conduct any Joint Operation which requires the prior approval of the Parties or the Management Committee without such approval being first had and obtained

B Recovery Of Deposits, Promissory Notes
And Similar Instruments

Whenever sufficient operations have been conducted with respect to the Agreement Lands to enable the Operator to recover rentals deposits promissory notes or like instruments from governmental authorities, the Operator shall promptly make application for recovery of such instruments unless otherwise agreed by the Parties Upon recovery of such rentals deposits promissory notes or like instruments and to the extent that a refund or other return is applicable to the type of security the Operator shall promptly return any of such rentals deposits, promissory notes or like instruments to those of the Parties which had contributed the same to the Operator, including any Party which had surrendered its Working Interest in a portion of the Agreement Lands after making such contribution

Subclause 6 07B This would include such matters as

- (a) the timing and parameters of any application for any extension replacement, substitute or derivative document of title,
- (b) the timing, lands and other parameters of any application for a declaration of significant discovery or declaration of commercial discovery,
- (c) negotiations respecting forms of financial responsibility required under the regulations (See 6 09E) and
- (d) the submission of a development plan insofar as this plan will not be prepared pursuant to a successor agreement

Subclause 6 07C. 1) Note that the provision only entitles the non-operators to observe those hearings or negotiations. It does not provide them with the right to participate in those proceedings

11) The inclusion of the last sentence ensures that a multitude of representatives of the non-operators will not attend sensitive negotiations respecting the documents of title. The alternative whereby the operator could restrict attendance to a single representative of all the non-operators, as selected by the management committee, seems inappropriate. If an individual non-operator has sufficient interest to wish to have a representative attend a meeting at its own expense, it should be permitted to have that person observe that meeting.

6 07 Operator As Representative Of The Parties

A. Operator To Act As Representative

The Operator shall be the representative of the Parties with respect to the Agreement Lands insofar as a representative is required by the Regulations

B Representative Acts Pursuant To
Directions Of Management Committee

The Operator shall consult with the Management Committee on a timely basis with respect to activities prescribed by its role as the representative of the Parties including without limiting the generality of the foregoing the negotiation of Documents of Title or amendments thereto the application for a declaration of significant discovery or a declaration of commercial discovery and the submission of a development plan The Operator shall use its best efforts to conduct such negotiations or other activities pursuant to the directions of the Management Committee and shall report the status of such negotiations or other activities to the Management Committee in a timely manner

C Non Operators To Have
Opportunity To Observe Negotiations

Insofar as negotiations hearings, representations or notices are with respect to the Agreement Lands, the Operator shall, as far in advance as is practicable, inform the Non Operators of the time and place of any negotiations or hearings it proposes or is required to attend or any representations it proposes to make to governmental authorities so as to provide representatives of the Non Operators with a reasonable opportunity to observe (but not participate in) such negotiations or hearings or comment on such representations, as the case may be, and the Operator shall forward to the Non Operators in a timely manner any written correspondence pertaining thereto which it receives from governmental authorities The Operator shall have the right, by notice to the Non Operators, to restrict attendance at such negotiations or hearings to a single representative of each Non Operator

6 08 Operator To Apply To Environmental Studies Research Fund

The Operator shall apply for funding from the Environmental Studies Research Fund when a study which, in the Operator's reasonable opinion, could be eligible for such payments has been approved to be conducted for the Joint Account, and any such payments shall be received by the Operator for the Joint Account

Clause 6 09 (General) A party must have access to the drilling contract in order to assess its exposure in most cases. The insurance subcommittee may want to recommend that the drilling contract should be subject to the approval of the parties. Even if the non operators are not privy to that contract, Clause 6 12 entitles the non operators to review a copy of all contracts entered into by the operator for the joint account.

Subclause 6 09B Schedule "C" will presumably include such policies as Employers Liability, Comprehensive General Liability, Automobile Liability and Aircraft Liability and will vary greatly from agreement to agreement.

Subclause 6 09C The insurance subcommittee may wish to establish guidelines pertaining to the manner in which an aggregate deductible program under the operator's insurance policy should be handled with respect to claims for the joint account.

Subclause 6 09D 1) It is inappropriate to authorize the operator to settle claims in advance of obtaining insurance proceeds or a settlement agreement from the insurer. This action could preclude payment by the insurer if the insurer had not been given proper notice of a potential claim prior to the operator's settlement or if it did not agree with the terms of that settlement.

6 09 Insurance

A. Operator To Comply With Legislation Respecting Employees

The Operator shall, in conducting Joint Operations, comply with the requirements of all Unemployment Insurance, Canada Pension Workers Compensation and Occupational Health and Safety legislation and all other similar Regulations applicable to workers employed for the Joint Account, and the Operator shall not suffer any bona fide claims or dues payable pursuant to such Regulations to become in arrears

B. Policies To Be Obtained For The Joint Account

The Operator shall prior to the commencement of Joint Operations, hold or cause to be held with a reputable insurance company or companies and thereafter maintain or cause to be maintained for the Joint Account and for the benefit of the Parties and their respective Affiliates, directors, servants, agents and employees the policies of insurance which are described in Schedule C" in such amounts as are stated therein or as may be designated from time to time by the Management Committee, as the case may be. In the event that the policies which the Operator is required to obtain or maintain are, in the Operator's opinion, unavailable or available only at an unreasonable cost, the Operator shall promptly notify the Non-Operators in order that the Management Committee may redetermine the policies which shall be obtained for the Joint Account. Subject to Subclauses C and H of this Clause 6 09 policies obtained pursuant to this Subclause may contain terms conditions or exclusions affecting or limiting the risks covered thereby or the circumstances under which the insurer may be required to indemnify or compensate the Parties thereunder, provided such terms, conditions or exclusions are, in the Operator's reasonable opinion, the best available from the marketplace on reasonable terms and ordinary or appropriate. However the Operator shall obtain the prior consent of the Management Committee with respect to any such change which is made after the relevant policy has been acquired for the Joint Account

C. Deductibles

The deductible amount respecting any insurance policy maintained for the Joint Account shall not exceed \$_____ 000 unless such other deductible amount has been agreed to by the Management Committee

D. Losses Initially Charged To The Joint Account

In the event the Operator makes any payments with respect to any losses, damages, claims or liabilities arising out of Joint Operations and covered by insurance policies maintained pursuant to Subclause B of this Clause 6 09 with the approval of the insurers thereof or the Operator

- ii) Note that losses are initially assumed to be for the joint account. Insofar as legal responsibility is reallocated to the operator pursuant to Clause 7.01, the accounts of the parties will be adjusted at the time of that determination.
- iii) If losses are not covered under insurance policies or fall within the deductible limits thereof, the operator is authorized to make payments up to the amount prescribed in subparagraph 6.01B(a)(ii) and such other payments as may be authorized by the management committee.

Subclause 6.09E The regulations may require the operator to maintain Operator's Extra Expense or Seepage and Pollution insurance. These policies are very expensive and may duplicate coverage maintained by individual parties. In such event, the requirements will be reviewed by the management committee to determine the most cost efficient manner to satisfy the obligations or the representations to be made to regulatory authorities with respect thereto by the operator.

makes any payments authorized hereunder with respect to any other losses damages claims or liabilities arising out of Joint Operations the Operator shall be entitled to charge such payments to the Joint Account However the Operator shall diligently attempt to process its claims under such policies with respect to such losses, damages claims or liabilities and shall promptly credit the Joint Account the amount it ultimately recovers under such policies Insofar as paragraph 7 01(a) or (b) (Limit Of Legal Responsibility) is applicable the Operator shall adjust the accounts of the Parties accordingly at such time as it is determined that such paragraph is applicable

E Regulatory Indemnities

The Operator shall for the Joint Account obtain and maintain all insurance, indemnities and other forms of financial responsibility required by the Regulations with respect to Joint Operations However, insofar as such requirements pertain to the purchase of Operator's extra expense or seepage and pollution insurance, such requirement shall be reviewed by the Management Committee to determine either the manner in which such requirements shall be satisfied or the representations to be made to governmental authorities with respect thereto by the Operator pursuant to Clause 6 07 (Operator As Representative Of The Parties)

F Contractors

- (a) The Operator shall use reasonable efforts to ensure its contractors and subcontractors, if any
 - i) comply with Unemployment Insurance, Canada Pension, Workers Compensation and Occupational Health and Safety legislation and all other similar Regulations applicable to workers employed by them with respect to Joint Operations, and
 - ii) maintain insurance of such types and in such amounts as the Operator deems necessary with respect to Joint Operations provided that such insurance policies shall include waivers of all rights, by subrogation or otherwise, against the Parties and their respective Affiliates directors, servants, agents and employees and that the Operator shall require such contractors and subcontractors to provide the Operator with certificates reflecting such insurance prior to the commencement of their services hereunder
- (b) Where applicable the Operator shall use reasonable efforts to ensure that marine Drilling Units and work boats used in Joint Operations are insured by the owners of such vessels on a full form (hull, tackle and machinery) or on an all risks form, that adequate protection and indemnity collision and tower's liability insurance is maintained by such

Subclause G One or more of the parties may have very limited assets, such that such party's obligation to indemnify may in fact only be academic if there were a loss. This provision enables the management committee to require such parties to maintain insurance coverage additional to that held for the joint account.

Some parties may object to the inclusion of this type of provision as a matter of principle.

The conceptual question though is simply whether financially secure companies should be required to maintain superfluous insurance coverage solely because of the financial limitations of one or more of its partners. Insofar as such coverage is expensive and unnecessary, it seems inappropriate to strengthen an entire chain instead of only the weak link.

Subclause 6.09L Note that the provision entitles any party to request that another party provide to the management committee evidence that such party has complied with its obligations to maintain insurance policies pursuant to this Clause.

The operator would usually be the party making this request. However, any party should be free to make the request because of the possibility that either the operator's own coverage is in question or the operator is less than diligent in policing compliance with insurance requirements.

owners and that such insurance policies include waivers of all rights by subrogation or otherwise against the Parties and their respective Affiliates directors servants agents and employees

G Parties Responsible For Physical Damage To Property

Each Party shall be responsible for insuring its own interest in the Agreement Lands with respect to physical damage to property (whether onshore offshore or in transit) loss of income, control of well seepage and pollution and for any insurance other than that referred to in this Clause 6 09 However, the Management Committee may require a Party to maintain policies of such insurance other than loss of income insurance, in such types and minimum amounts as the Management Committee may reasonably designate, having due regard to the types and amounts of insurance maintained by similar companies in areas with operating conditions similar to those of the Agreement Lands

H Subrogation And Other Required Provisions

- (a) The Operator shall ensure that each insurance policy maintained for the Joint Account pursuant to this Clause 6 09 includes waivers of all rights, by subrogation or otherwise, against the Parties and their respective Affiliates, directors servants agents and employees Each Party shall ensure that the insurance policies described in Subclause G or J of this Clause 6 09 that are maintained by such Party shall contain such waivers
- (b) The Operator shall use all reasonable efforts to ensure that each insurance policy maintained for the Joint Account pursuant to this Clause 6 09 includes (i) a provision that coverage is primary to any other coverage carried by the Parties, other than coverage maintained by a Party to reduce its exposure to a deductible, (ii) a provision that such policy shall survive the default or bankruptcy of the insured for claims arising out of an event before such default or bankruptcy, and (iii) a provision that the insurer shall provide the Operator with sixty (60) days written notice of cancellation of such policy

I Evidence Of Compliance

- (a) If requested by a Party, the Operator shall furnish to the Management Committee a photocopy of each policy of insurance the Operator maintains for the Joint Account or insofar as insurance maintained for the Joint Account is part of a policy of insurance which is not entirely maintained for the Joint Account, such other documentary evidence of compliance with the provisions of this Clause 6 09 as may be reasonably appropriate
- (b) If requested by another Party a Party shall furnish to the Management Committee such documentary evidence of compliance with the provisions of this Clause 6 09 as may be

Clause 6 09J Subclause 9 08A provides that the insurance obligations will apply mutatis mutandis to an independent operation as if it were a joint operation This Subclause is required however since it ensures that the participants in the well cannot unilaterally alter the insurance coverages by a vote of the management committee which applies mutatis mutandis to that operation

Clause 6 10 (1) Although an informational forecast mechanism is generally accepted with respect to the exploration phase it is likely that some type of binding forecast mechanism will be utilized in transitional or development phase agreements, primarily because of a proliferation of studies as a project moves towards the development phase

ii) Some may question the rationale for including a mechanism whereby the management committee reviews and votes on a forecast when the forecast is ultimately for informational purposes only

The forecast is a statement of the parties intention to conduct certain operations It is included for three major reasons

Firstly, it encourages the parties to discuss their plans for the agreement lands in a frank and timely manner, reflecting one of the major policy goals of the document to encourage good communication and joint planning

Secondly these discussions enable the parties to budget for an anticipated work program

Thirdly, it provides the operator with guidance respecting the anticipated requirements to allocate personnel and other services to the project

Although the management committee may not be able to agree on a forecast in practice the mechanism at least requires the parties to consider their plans for the upcoming period fairly carefully The elimination of this voting requirement would provide no incentive for a party to present its plans for the lands to the parties in a forthright manner

reasonably appropriate with respect to each policy of insurance such Party maintains for its own account pursuant to Subclause G or J of this Clause 6 09

J Independent Operations

Unless otherwise agreed by the Parties each Party which carries on any operation on its own behalf pursuant to this Operating Procedure shall maintain, at its own expense insurance with limits not less than those prescribed in Schedule C" and, if applicable to such Party Subclause G of this Clause 6 09

6 10 Forecasts

A. Operator To Prepare Forecast

Not later than ninety (90) days before the beginning of the succeeding Forecast Period, the Operator shall prepare and submit to the Management Committee a Forecast with respect to such Forecast Period

B Forecast To Be Itemized

The Forecast shall be grouped by major divisions and itemized in reasonable detail within such major divisions Each Forecast shall contain such justifications and explanations as are reasonably necessary for understanding the recommendations made therein

C Non Operator May Make Recommendations

A Non Operator may submit its own recommendations regarding the Forecast to each Party not later than one hundred and fifty (150) days before the beginning of the succeeding Forecast Period Such recommendations shall be supported by such explanations as are reasonably necessary for understanding such recommendations

D Forecast Subject To Revision

The Forecast may be approved in whole or in part by the Management Committee

E Forecasts Are Informational

Notwithstanding the approval of a Forecast by the Management Committee Forecasts shall be for informational purposes only, and they shall not commit the Parties to make the expenditures described therein

Paragraph 6.12A(a) 1) This provision is subject to the overriding requirement in Clause 6.02 that the operator comply with the applicable regulations (i.e. Canada Benefits requirements)

ii) Note that the management committee is not necessarily involved in the selection of contracts awarded under the competitive bidding process or the review of the relevant documents

The overriding requirement to award contracts on a prudent and competitive basis allows the operator the discretion to award most contracts, albeit with significant risk. The non-operators should not be involved in the details of the contracting process hereunder such as compiling the bid list and setting technical specifications. However the operator may be uneasy about awarding certain specific contracts without the advice of the management committee, so could refer the matter voluntarily to the management committee in accordance with Clause 4.05. The parties might also agree to create a contracting subcommittee.

It is questionable whether the non-operators should want a provision whereby they are required to review the supply agreements. It is unlikely that they would, in fact, review them carefully. In practice, the operator would probably use a mail ballot and the non-operators would not object such that the contract would be approved. This would arguably prevent the non-operators from disputing the provisions of the contract at a later date.

Different considerations though would probably apply under the development agreement.

Paragraph A(b) 1) This paragraph does not address the situation in which a contract applies to joint operations and other operations. While this has been a major concern of operators, it cannot be addressed specifically in the document. To include a blanket waiver with respect to contracts pertaining partly to the agreement lands and partly to other lands would allow an operator to circumvent its obligations at will. The more reasonable alternative is to require the operator with that problem to address the specific contracts with the non-operators on a case by case basis. This should not present the operator with any difficulty in practice, assuming that the rates are reasonable.

ii) The second election towards the end of the paragraph pertains to agreements in which the operator is anticipated to supply drilling units or other major ancillary equipment, where it is understood that the parties would use the operator's equipment if feasible. If similar goods or services are available commercially from third persons on similar terms, the rates shall not exceed those available commercially. Where, however, they are not available commercially, the price charged to the joint account shall be fair and reasonable in the circumstances.

The operator should advise the non-operators of these transactions and the material terms thereof in a timely manner. It is implicit in the option that the operator has canvassed the alternatives to determine the commercial rates at the relevant time for the supply of similar goods and services.

Assuming this survey had been conducted, it does not seem unreasonable to require an operator to share this information with the non-operators at the time the transaction takes place. The resultant minor inconvenience to the operator seems outweighed by the policy demand of meaningful supervision of the operator.

This is a more desirable manner of dealing with the issue than waiting for the transactions to be discovered significantly after the fact during an audit. This requirement is also consistent with the comparable provisions in the draft 1988 AAPL Operating Procedure.

6 11 Taxes

Except as otherwise provided in this Operating Procedure, the Operator shall pay for the Joint Account, all taxes levied with respect to the Joint Property, except income taxes and other levies assessed against the Parties individually. The Operator shall promptly forward to a Party a copy of any tax notice it receives respecting such Party's interest in the Joint Property to the extent that such tax is one for which payment is not the responsibility of the Operator.

6 12 ContractsA. Contracts Awarded On A Prudent And Competitive Basis

- (a) The Operator shall use reasonable efforts in soliciting bids for the supply of goods and services from reliable contractors with respect to Joint Operations. Contracts for the supply of such goods and services shall be awarded on a prudent and competitive basis.
- (b) Notwithstanding paragraph (a) of this Subclause A, the Operator shall not be required to obtain competitive bids hereunder where competitive bidding is not warranted having regard to the size or nature of the contract or the timing constraints imposed by operational necessity. However, in the event that the Operator enters into any such contract with a Third Person which is not an Affiliate of the Operator, the Operator shall promptly advise the Non Operators of its reasons for entering into such contract when such contract entails an expenditure for the Joint Account of greater than \$_____ 000 and less than \$_____ 000 and if such contract would entail an expenditure for the Joint Account of greater than the latter amount, the Operator shall obtain Management Committee approval of the lack of a competitive bid before entering into such contract. In the event that in conducting Joint Operations the Operator proposes to supply its own goods or services or to enter into a contract with an Affiliate with respect to the supply of goods or services, the Operator shall (specify whether * or ** applies _____) *obtain the approval of the Management Committee before supplying such goods or services or entering into such contract, as the case may be, if the value of such transaction would exceed (\$_____ 000) / **supply such goods and services or contract for them at prices and rates available commercially from Third Persons for the supply of similar goods or services on similar terms and conditions, and, when such goods and services are not so available commercially from Third Persons, at prices and rates which are fair and reasonable in the circumstances, provided that the Operator shall advise the Non-Operators of all such transactions with a value exceeding \$_____ 000 and the material terms thereof as they are made. The provisions of this paragraph (b) however, are at all times subject to the financial restrictions prescribed by Subclause 6 01B (Expenditure Limitations).

Clause 6.13 Clause 16.01 prescribes the patents which are held as joint property

Clause 6.14 Insofar as the operator is taking corrective measures of great significance, it would be the better practice to notify the parties of the problem promptly. If the matter pertains to a breach of the regulations, it may be of sufficient importance that it would fall within Subclause 6.07B such that the operator would have the express duty to consult with the management committee.

Clause 6.16 Most of the joint property will be held by the operator on behalf of the joint account. This provision simply codifies that trust relationship.

If the joint property were held by the operator on behalf of the parties in proportions other than their working interests, Article 3.00 would apply.

B Non Operator s Right Of Access

A Non Operator shall have the right upon reasonable notice to the Operator, to examine contracts for the supply of goods and services which were entered into by the Operator for the Joint Account

C Assignability

The Operator shall diligently attempt to ensure that each contract for the supply of goods and services for the Joint Account can be freely assigned to any of the Parties in the event of the resignation or the replacement of the Operator, provided that all such contracts shall provide that the Parties are not jointly and severally bound thereunder

6 13 Application For Patents

If patentable processes, procedures or equipment arise out of Joint Operations the Operator shall apply for patents therefor pursuant to the instructions of the Management Committee

6 14 Obligation To Advise Parties Of Errors And Omissions

The Operator shall promptly notify each Non Operator upon discovery of either any errors in financial reports or billings made by it hereunder or any failure on its part to comply with the Regulations applicable to the performance of its obligations herein Such notification shall state the nature of the Operator s error or omission and the corrective measures taken by the Operator following such discovery

6 15 Acquisition Of Necessary Rights

The Operator shall acquire and maintain for the Joint Account all necessary licenses, permits approvals or other rights of a similar nature required by the Regulations for the conduct of Joint Operations

6 16 Operator To Hold Joint Property In Trust

Insofar as the Parties do not hold title to the Joint Property in their own names the Operator shall hold the Joint Property in trust on behalf of the Parties, subject to the provisions of Clause 8 07 (Commingleing Of Funds) and the other modifications to the ownership of the Joint Property prescribed herein

Clause 6 17 Remember that Article 3 00 applies to ensure that only non operators having an interest in the relevant lands have the right to this information

Subclause 6 17D Not all companies will require copies of additional data That being the case it would be inappropriate to charge the joint account for the reproduction costs of data being supplied to only some of the parties

6 17 Submission Of Information To Parties

A. Operator To Supply Non Operators
With Data Described In Schedule D

The Operator shall supply each Non Operator with the information described in Schedule D with respect to each well drilled for the Joint Account

B Velocity Surveys

Provided hole conditions permit velocity check shot surveys shall be conducted for the Joint Account by the Operator in each well drilled for the Joint Account unless the Parties otherwise agree The Operator shall supply each Non Operator with a copy of each such survey in a timely manner

C Daily Estimate Of Well Costs

The Operator shall provide each Non Operator with a daily estimate of the cumulative Well Costs with respect to any well being drilled for the Joint Account

D Geophysical Data To Be Forwarded On A Current Basis

The Operator shall provide each Non Operator on a current basis with a copy of all shot point maps and a mylar copy of all record sections from geophysical programs conducted for the Joint Account The Operator shall provide a Non Operator which so requests with basic field data and information respecting such geophysical programs in a timely manner provided that the reproduction of such requested basic data and information shall be at the expense of such Non Operator

E Studies

The Operator shall provide each Non Operator with a copy of all relevant data information and records obtained from all environmental socioeconomic and engineering studies conducted for the Joint Account in a timely manner provided such data can be easily reproduced In cases where such data cannot be easily reproduced the Non Operators shall be provided with access to such data in either the Operator's Calgary office or its field office serving the Agreement Lands

Subclause 6.18B The usual result of a reference to an operator as an independent contractor would be to require the operator to assume full legal responsibility for its own negligence. This general legal principle is overridden by the provisions of the document respecting liability and indemnity (Article 7.00).

F Submission Of Reports And Data To Governmental Agencies

The Operator shall submit all reports and data respecting Joint Operations to the relevant governmental authorities to the extent that the Regulations require such submission. Such information shall be submitted to such governmental authorities in such a manner so as to ensure that, insofar as is permitted by the Regulations, such information shall be held confidential by such governmental authorities.

G Proprietary Information

Notwithstanding any other provision contained in this Operating Procedure, all data information and records that the Operator is required to supply to a Non Operator pursuant to this Operating Procedure shall exclude data processing techniques, velocity analyses, any paleontological analyses and all other interpreted data, unless and to the extent that such data processing techniques, velocity analyses, paleontological analyses and interpretations had been derived or conducted for the Joint Account.

H Information Supplied To Designated Personnel

The Operator shall supply all information which it is required to supply to a Non Operator hereunder to the personnel designated by such Non Operator by written notice to the Operator. Such notice shall include office and home addresses and telephone numbers of the personnel so designated.

6 18 Rights Of Operator

A. Operator To Retain Rights And Obligations

The Operator shall have all the rights and obligations of a Non Operator with respect to its Working Interest, Average Document Interest, Average Interest or Operation Working Interest as the case may be.

B Independent Status Of Operator

The Operator is an independent contractor in the conduct of operations hereunder. The Operator shall furnish or cause to be furnished, all material, labour and services necessary for the conduct of Joint Operations. The Operator shall determine the number and selection of personnel, their hours of labour and the compensation they are to receive for their services in connection with Joint Operations. All personnel and contractors employed in Joint Operations shall be deemed to be the employees or the contractors of the Operator, as the case may be. The Operator shall have the right to assign and retain such technical

Clause 7 01 i) Note the notwithstanding reference at the beginning of the provision Clause 6 02 imposes a general obligation on the operator to conduct operations in accordance with good oil field practice In the absence of this reference it is possible that the overall standard prescribed by Clause 6 02 could possibly override Clause 7 01, which basically limits the operator s general liability to gross negligence This is because the loss may be one which is not addressed by the specific standard of legal responsibility in Clause 7 01, such that it may be open to argue that the general standard was intended to prevail

ii) Note the reference "whether contractual or tortious If the reference to contractual liability is not included, there is a possibility that a court may interpret the provision to apply solely to tortious liability See Dominion Bridge Company Limited v Toronto General Insurance Company (1963), 45 W W R 125 (S C C) and Can Indemnity Co v Andrews and George Co., [1953] 1 S C R 19 (S C C)

iii) Note the reference "whether negligent or otherwise There is a significant risk that an operator would remain solely responsible for its own negligence unless this exclusion is included As a general rule one has to contract out of responsibility for one s own negligence specifically In the absence of this reference, one can only argue that the special gross negligence provisions imply that losses applicable to simple negligence should be borne for the joint account

iv) Note the distinct treatment between liability and indemnity If the distinction between the two is blurred, the parties face the risk that the provision could be held to be solely an obligation to indemnify In such event, the non-operators would not be able to rely on the clause to provide them with a remedy with respect to direct damage to their property See Mobil Oil Canada, Ltd v Beta Well Service Ltd (1974), 43 D L.R. (3rd) 745 (Alta S C, App Div)

administrative and supervisory personnel and consultants as may be necessary for the conduct of Joint Operations, subject to the provisions of the Accounting Procedure

7 00 INDEMNITY AND LIABILITY OF OPERATOR

7 01 Limit Of Legal Responsibility

Notwithstanding Clause 6 02 (Operations Conducted In Proper Manner), the Operator, its Affiliates directors servants, agents and employees shall not be liable to the Non Operators, or any of them for any loss, expense, injury, death or damage whether contractual or tortious, suffered or incurred by the Non Operators resulting from or in any way attributable to or arising out of any act or omission, whether negligent or otherwise of the Operator or its Affiliates directors servants agents or employees in conducting or carrying out Joint Operations, except

- (a) when and to the extent that such loss, expense injury, death or damage relates to a risk or risks against which the Operator is required to carry insurance for the Joint Account as provided in Clause 6 09 (Insurance) and is within the limits of such required insurance in which case the Operator shall
 - (i) be solely liable for such loss, expense, injury, death or damage, and
 - (ii) indemnify and save harmless each Non Operator and its Affiliates, directors, servants, agents and employees from and against the same and also from and against all actions causes of action, suits, claims and demands by any person or persons whomsoever in respect of any such loss expense, injury death or damage, and any costs and expenses relating thereto,

provided that if the Operator had maintained insurance covering such loss, expense, injury, death or damage, the Operator shall be released from the responsibility and indemnity imposed by this paragraph (a) to the extent that

- (i) the insurer thereunder is financially unable to pay all or any portion of a valid claim with respect to such loss, expense, injury, death or damage,
- (ii) such insurer is determined by a court of competent jurisdiction not to be required to make payment with respect to such loss, expense, injury, death or damage under such policy of insurance, where either the Management Committee instructed the Operator to commence an action with respect thereto pursuant to Clause 12 01 (Conduct Of Litigation) or the Operator commenced such an action for its own account, or

Proviso (b) i) The exclusion of liability respecting the loss or delay of future production is new to North American frontier agreements. However, the concept is receiving increasing support in Europe where proponents argue that the magnitude of a potential loss of this type is such that the assumption of operatorship would not be viable without such an exemption. The limitation respecting reservoir damage, however, generally is not found in European agreements utilizing the principle since those agreements contemplate the production phase.

The most obvious loss resulting from reservoir damage would be, of course, a loss of profits.

ii) One issue which may arise in the future is the appropriateness of a general exception for consequential or indirect damages. The value of such a general provision is questionable, though since the normal common law rules of remoteness and foreseeability would apply in the absence of such a provision anyway. In very simple terms, insofar as the operator owes a duty of care to the non-operators, it would be necessary for the non-operators to demonstrate (i) that the operator's actions caused their loss, (ii) that the loss was reasonably foreseeable in relation to the action, (iii) the degree of their damages, and (iv) that the conduct was in fact grossly negligent. Notwithstanding that the general exception for consequential or indirect damages has not been included, the inclusion of the loss of profits exemption addresses the major aspect of the concern.

Clause 702. i) The case of Greenwood Shopping Plaza Ltd v Beattie et al (1980) 111 D L R (3rd) 257 (S C C) held that a person who is not a party to a contract can neither sue nor rely upon it to protect himself from liability, except in case of agency or trust. That being the case, there is a likelihood that the obligation to indemnify not only the operator but also its affiliates, directors, servants, agents and employees would not be effective. Nevertheless, the provision accurately reflects the intention of the parties and does not place the operator in a worse position than that in which it would be in the absence of the reference.

The inclusion of the reference to directors and officers is included solely because of the tendency of recent suits in the United States to cast a wider liability net.

ii) Remember that Article 300 applies to ensure that the obligation to indemnify only applies to the parties which have an interest in the relevant lands. Subclauses 908A & F apply to independent operations.

- (iii) the Management Committee determines pursuant to Clause 12 01 that the Operator is not to commence an action for the Joint Account against such insurer with respect to such loss expense, injury death or damage and
- (b) when and to the extent that such loss, expense, injury, death or damage is a direct result of or is directly attributable to the Gross Negligence of the Operator or its Affiliates directors servants agents or employees, in which case the Operator shall
 - (i) be solely liable for such loss, expense injury, death or damage, and,
 - (ii) indemnify and save harmless each Non Operator and its Affiliates directors, servants agents and employees from and against the same and also from and against all actions causes of action, suits, claims and demands by any person or persons whomsoever in respect of any such loss expense, injury, death or damage and any costs and expenses relating thereto,

provided that an act or omission of the Operator or its Affiliates directors, servants agents or employees shall not, of itself, be deemed to be Gross Negligence if such act or omission was done or was omitted to be done in accordance with the instructions of or with the concurrence of the Management Committee or the Non Operators

However, in no event shall the responsibility prescribed by paragraph (a) or (b) of this Clause 7 01 extend to losses suffered by the Non Operators respecting the loss or delay of future production attributable to reservoir damage, including without restricting the generality of the foregoing, loss of profits

7 02 Indemnification Of Operator

Except as otherwise provided in Clause 7 01 (Limit Of Legal Responsibility), the Parties hereby indemnify and save harmless the Operator, its Affiliates, directors, servants, agents and employees from and against any and all actions, causes of action, suits, claims, demands, costs, losses and expenses resulting from loss injury, death or damage respecting any person, which may be brought against or incurred or suffered by the Operator, its Affiliates, directors servants agents and employees or which the Operator, its Affiliates, directors, servants, agents and employees may sustain, pay or incur by reason of, or which may be attributable to or arise out of, any act or omission of the Operator or its Affiliates, directors, servants, agents or employees in conducting Joint Operations All such liabilities shall be for the Joint Account and shall be borne by the Parties in the proportions of their respective Working Interests

Clause 7.03 i) The provision is included primarily because of the concern that liability under a document of title may be allocated jointly to all interest holders thereunder

ii) Note that the provision only applies to indemnification and not liability. Insofar as the related parties suffer a direct loss as the result of activities on another sub area, the related parties would have to rely on the principles of conventional common law. (Common law principles would also apply to parties holding interests in sub areas which are not subject to the same document of title)

iii) The interrelationship of Clauses 7.01 and 7.03 is basically that a related party (in its capacity only as a related party) has a remedy against the operator and non operators in the relevant sub area with respect to a loss the related party incurs as a result of a joint operation on that sub area.

The allocation of responsibility among those parties though has no relevance to a related party's right to be compensated for its loss.

Among the operator and non-operators in the sub area, that legal responsibility is subsequently allocated pursuant to Clauses 7.01 and 7.02, such that damage will usually be allocated for the joint account of those parties.

To illustrate, assume that A, B and C hold working interests in sub area 1 and that A, D, E, F and G hold working interests in sub area 2. An operation conducted for the joint account on sub area 1 results in a third party claim against the working interest owners in both sub areas in circumstances that the gross negligence proviso does not apply. Legal responsibility would be allocated in accordance with the working interests in sub-area 1. Companies A, B and C would indemnify A, D, E, F and G for the third party losses they suffered as a result of that operation. In A's case, though, this would only be to the extent that A had suffered that loss in its capacity as a related party. It would still be required to assume its share of the responsibility for the loss as a working interest owner in sub area 1.

Article 8.00 (General) i) Note Clause 8.08. That Clause and Article 3.00 have the effect of altering the references to joint account and working interest throughout the Article, such that the average interests, average document interests or operation working interests apply as the context requires.

ii) The parties may determine that it is appropriate to implement a "zero balance banking" mechanism at some point. In that event, the agreement would be amended accordingly to include the necessary mechanics. This document should not provide the operator with the unilateral right to impose a zero balance banking mechanism unless the details of the mechanism are specified in the Accounting Procedure.

Clause 8.03 i) Advances are covered in Clause 10.4 of the 1986 PASC Frontier Exploration Accounting Procedure. That provision includes the adjustment mechanism.

ii) Although the operator can require the non-operators to advance promptly their share of any expenditures associated with an emergency under Subclause B, this is subject to the restriction that the operator may only request such advance insofar as it is unable to comply with the normal advance process. If, for example, emergency expenditures are estimated to be \$1 MM in the current month and \$2 MM in the succeeding month, the operator may only request the parties to advance immediately their share of the expenditures for the current month. The expenditures pertaining to the succeeding month would be requested as a normal advance.

7 03 Related Parties To Be Indemnified

The Operator and the Non Operators hereby indemnify and save harmless each Related Party its Affiliates, directors, servants, agents and employees from and against any and all actions, suits, claims, demands, costs, losses, expenses and damages of any person whomsoever which may be brought against or incurred or suffered by such Related Party, its Affiliates, directors, servants agents and employees or which such Related Party, its Affiliates, directors, servants, agents and employees may sustain, pay or incur by reason of or which may be attributable to or arise out of, any act or omission of the Operator, its Affiliates, directors, servants agents or employees in conducting Joint Operations

8 00 JOINT COSTS AND EXPENSES

8 01 Accounting Procedure As Basis

All charges and credits for the Joint Account shall be made in accordance with the Accounting Procedure. However, the accounting and financial records maintained by the Operator with respect to the operations conducted by it hereunder shall be maintained separately from those kept by it with respect to operations conducted under other agreements, in accordance with established industry accounting practice

8 02 Operator To Pay And Recover From Parties

Subject to the provisions of Clause 8 03 (Advance Of Funds) and the Accounting Procedure, the Operator shall initially advance and pay all expenditures of whatsoever nature and kind incurred in Joint Operations. The Operator shall charge to each Non Operator its Working Interest share of such expenditures, and each Non Operator shall pay the same to the Operator as provided in the Accounting Procedure

8 03 Advance Of Funds

A. General

The Operator may, at its election, require each Non Operator to advance its Working Interest share of all expenditures that the Operator reasonably estimates will be paid in the ensuing calendar month for the Joint Account in accordance with the Accounting Procedure

Subclause 8.04A. Given that a defaulting party has probably created liens floating charges or other security in favour of its creditors, it is imperative that one try to provide the operator with the earliest possible claim. Therefore, the Subclause has been structured so that the operator's claim arises when the agreement is signed, rather than as the expenditures are made.

However, this could pose a significant problem for a project related financing. Any lender financing a frontier project would be very reluctant to accept a security which ranks in advance of its own security.

Given that we do not have any practical experience with this provision at this time and the recognition of the operator's lien under the Canada Petroleum Resources Act legislative regime, it seems preferable to reconsider this issue in the context of project experience. In any event, a company which believes that this provision may present a problem in a particular case should make that objection during the negotiation of the individual agreement.

The other important point to recall about this Clause is that there is serious doubt respecting the value of either the products or proceeds to be derived from the properties to which the lien is attached, simply because there is such a delay between the expenditures and the derivation of revenue from the property. Similarly, the value of the resource property is probably severely discounted because of the limited market for the interest.

Subclause 8.04B i) Note the difference between the less harsh remedies of interest and set-off and the more draconian self help remedy of the seizure of property. The latter remedy is only available when the default has continued for more than 60 days.

This variation ensures that the operator cannot immediately resort to the harsher remedies before pursuing other avenues. However, the 60 day period was chosen to ensure that the operator would have access to the exceptional remedies before the default imposed a serious hardship on the operator.

ii) The rights in this provision are premised on the existence of a default. A prudent operator probably should not resort to the remedies where the parties are disputing an accounting practice or the adequacy of invoice information. In such event, it may be attractive to deposit the disputed amount into a trust account. Interest thereon would accrue for the benefit of the successful party.

iii) Interest should accrue whether or not the operator has given the non-operator prior notice of its intention to charge interest. The inclusion of the "regardless" phrase should eliminate the risk that prior notice is required, as was held in Renaissance Resources Ltd v Metalore Resources Ltd, [1984] 4 W R R 430 (Alta Q B), affirmed, [1985] 4 W W R 673 (Alta C A).

iv) The most obvious use of the suspension of rights would be to withhold the information from joint operations. Despite the broadness of the remedy, the suspension of other privileges should be considered very carefully in each individual case. A denial of a party's right to participate in a well, for example, might not be effective at law.

Paragraph 8.04B(a) One question which may arise is whether the seizure of funds accruing to the defaulting party pursuant to another agreement would place the operator in default under that other agreement. Since the right of set-off is a common law right anyway and this paragraph states that the timing of the execution of that other document is irrelevant to that right, it is doubtful that this would be the case. However, the implications of the exercise of this right should be considered in each individual case.

B Emergency Situation

Notwithstanding Subclause A of this Clause 8 03, in the event that the Operator is required to make expenditures pursuant to subparagraph 6 01B(b)(ii) (Expenditure Limitations) the Operator may, by notice, require each Non Operator to advance its Working Interest share of the Operator's estimate of such expenditures within ten (10) days of the Non-Operator's receipt of such request, insofar only as the Operator is unable to comply with Subclause A of this Clause 8 03 with respect to such expenditures

8 04 Operator's Lien

A. Operator To Have Lien On Joint Property

As of the effective date of the Agreement, the Operator shall have a first and prior lien on all rights and interests of each Party in the Joint Property to secure payment of such Party's Working Interest share of expenses and expenditures incurred for the Joint Account. A Party shall ensure that any security interest it gives with respect to its interest in the Joint Property includes a provision whereby such security interest is subject to the prior claim of the Operator for repayment of such Party's share of expenses and expenditures incurred for the Joint Account.

B Operator's Rights

If a Party fails to pay or advance any of the monies to be paid or advanced by it hereunder, the Operator may 1) charge interest as prescribed in the Accounting Procedure, regardless of whether the Operator has notified the defaulting Party in advance of its intention to charge such defaulting Party interest with respect to the amount unpaid by such defaulting Party, and 2) withhold from such defaulting Party any further information and privileges with respect to Joint Operations, which information and privileges shall be conveyed or restored, as the case may be, to such defaulting Party upon such default being fully rectified. If the default continues for thirty (30) days after the Operator has served notice upon such Party specifying the default and requiring the same to be remedied, the Operator may, without limiting the Operator's other rights in this Operating Procedure, at law or in equity

- (a) set-off against the amount unpaid by such defaulting Party any sums due or accruing to such defaulting Party from the Operator pursuant to this Operating Procedure or any other agreement between the Operator and such defaulting Party, whether executed before or after the effective date of the Agreement,
- (b) maintain an action or actions for such unpaid amounts and interest thereon on a continuing basis as such amounts are payable but not paid by such defaulting Party, as if

Paragraph 8.04B(c) 1) Note the duty on the operator to attempt to sell the seized property on the best available reasonable terms, so as to attempt to maximize the potential for the recovery of excess funds for the defaulting party. Otherwise, the operator has no incentive to attempt to sell the property for greater than the amount owed to it by the defaulting party.

ii) Note that the operator's actions under this paragraph are subject to the approval of the management committee. Operators may object that the operator should have the sole discretion to recover amounts owed to it in the manner it sees fit.

There are, however, three major reasons for the approval mechanism.

Firstly, as a matter of policy, a defaulting party should be protected from an overly zealous use of remedies by an operator. If the operator's proposed course of conduct is appropriate in the circumstances, the approval mechanism should not unduly constrain the operator.

Secondly, the interrelationship of the financial provisions is not so simple as to enable an operator to argue that the management committee might preclude the operator from recovering its costs. Clause 8.05, in essence, requires the parties to indemnify the operator in the event of a financial default upon request by the operator.

Thirdly, it is probably advantageous for the operator to have obtained the approval of the management committee because of the possibility that there may be litigation associated with the exercise of this exceptional remedy.

Subclause 8.04C. This provision is required because of the provisions of the Interest Act and comparable provincial legislation. In effect, such legislation operates to merge a judgement of principal and interest.

the obligation to pay such amounts and the interest thereon were liquidated demands due and payable on the relevant date such amounts were due to be paid, without any right or resort of such defaulting Party to set-off or counter-claim and

- (c) provided such default has continued for at least sixty (60) days following such notice, enforce the lien applicable to such default pursuant to Subclause A of this Clause 8 04 by taking possession of or using free of charge all or any part of the interest of such defaulting Party in the Joint Property and all rights, powers and privileges of such defaulting Party in connection with such interest until such default is fully rectified. Subject to the approval of the Management Committee and such conditions as it may prescribe which do not conflict with the provisions of this paragraph (c), the Operator may sell and dispose of any such Joint Property of which it has so taken possession, either in whole or in part, at public auction or by private tender at a time and on whatever terms it shall arrange, having first given at least ten (10) days prior written notice to such defaulting Party of the time and place of such sale, provided that the Operator may only sell such interest in the Joint Property to such person or persons for such price and on such conditions as the Operator determines are the best reasonable terms available in relation to such defaulting Party's possible recovery of funds in excess of the amount owed by it hereunder. Such sale or other realization shall be without prejudice to the Operator's claim for deficiency and shall be free from any right of redemption on the part of such defaulting Party (which right is hereby waived and released), and such defaulting Party also waives all formalities prescribed by custom or by law with respect to such sale or other realization. The proceeds of such sale shall be first applied by the Operator in payment of any amount required to be paid by such defaulting Party and not paid by such Party hereunder (including any interest which has accrued hereunder with respect thereto), and any balance remaining thereafter shall be paid to such defaulting Party after deducting reasonable costs of such sale. Any sale made as aforesaid shall be a perpetual bar both at law and in equity against such defaulting Party and its assigns and against all other persons claiming an interest in such Joint Property or any part or parcel thereof sold as aforesaid by, from, through or under such defaulting Party or its assigns.

C. Interest Shall Not Merge With Judgement

The obligation to pay interest at the rate specified in the Accounting Procedure with respect to a default is to apply until such default is rectified and shall not merge into a judgement for principal and interest, or either of them. The Parties waive the application of any Regulations to the contrary insofar as such waiver is permitted by the Regulations.

Clause 8.05 i) Note that the operator has the right to use this mechanism after a party has been in default 60 days, as compared to 3 months under the conventional 1981 CAPL Operating Procedure. Given the magnitude of the costs associated with frontier operations, a 3 month delay imposes too great a burden upon an operator.

ii) The non-operators are required to reimburse the operator its out of pocket costs associated with the default. They are not required to reimburse the operator interest which has accrued on the unpaid principal at the time the operator utilizes the mechanism.

iii) This provision would extend to losses incurred for the joint account pursuant to Article 7.00, since those losses would pertain to joint operations. In the event the parties were held liable to a third person for a loss suffered by that person as a result of a joint operation, the parties would be jointly responsible for the loss unless the court had apportioned responsibility among the defendants in its judgment. It would be a rather odd result if the operator were required to contribute the share of an insolvent party without a corresponding right to have the remaining parties share that burden.

Clause 8.07 i) The right to commingle has traditionally been a generally accepted principle. Because of greater concern respecting the financial viability of operators in light of the difficult economic climate facing our industry, there will be an increasing demand for the operator to hold joint account funds in a separate trust account.

This question could have been addressed by including a provision whereby the parties would be required to elect whether to permit commingling or to require a trust account when the Agreement was being negotiated. However, this Clause is preferable to that mechanism because it allows the management committee to require the operator to maintain a trust account if the management committee subsequently determines that there is a concern respecting the financial viability of the operator. (See paragraph 4.05(ee))

Note, though, that the Alberta Court of Appeal recently decided in Bank of Nova Scotia v Societe General (Canada) et al., [1988] 4 W.W.R. 232 (Alta. C.A.) that there is a trust relationship imposed when the conventional commingling clause is used, since the intention that the operator acts for the benefit of the non-operators pervaded the entire conventional CAPL Operating Procedure.

ii) One might argue that the operator and its affiliates should be excluded from voting on such matters. As was the case with the challenge vote (see discussion re Clause 5.03), the inclusion of a non-operator voting procedure in fact operates against the interest of the parties. Such a voting procedure is more onerous for the non-operators when an operator has a low interest and less onerous where the operator has a higher interest.

However, as noted in the challenge discussion, a modification is required where the operator has a majority interest, perhaps a reference to arbitration to determine if a trust account is appropriate.

D Books And Records Constitute Proof Of Default

Books and records kept by the Operator with respect to the Joint Account shall constitute conclusive proof of the existence of any financial default hereunder, subject, however, to the rights of inspection and audit provided for elsewhere in this Operating Procedure

8 05 Reimbursement Of Operator

If the Operator has not received full payment of any amount to be paid to it by a Party with respect to such Party's Working Interest share of the expenditures incurred in Joint Operations within sixty (60) calendar days following the date such payment was due, each Party, upon being billed therefor by the Operator, shall forthwith contribute a fraction of the unpaid amount, excluding interest thereon, which fraction shall have

- (a) as its numerator the Working Interest of such Party, and
- (b) as its denominator - the aggregate Working Interests of all Parties except such defaulting Party

Thereupon, each such contributor shall be proportionately subrogated to the Operator's rights pursuant to Clause 8 04 (Operator's Lien) and to the interest thereafter payable pursuant to the Accounting Procedure on the unrecovered portion of its contribution made pursuant to this Clause 8 05

8 06 Default Of Operator

In the event the Operator is the Party which defaults in paying its share of any expenditure incurred for the Joint Account, the Non Operators may appoint one of the Parties as representative ad hoc of the Non-Operators pending the appointment of a new Operator pursuant to Subclause 5 02A (Immediate Replacement Of Operator) Such Party shall thereupon be entitled to exercise any of the rights and remedies otherwise available to the Operator pursuant to this Operating Procedure mutatis mutandis in order to rectify such default.

8 07 Commingling Of Funds

The Operator may commingle with its own funds the monies which it receives from or for the Joint Account pursuant to this Operating Procedure unless and until it is required by the Management Committee to maintain funds held for the Joint Account in a separate trust account

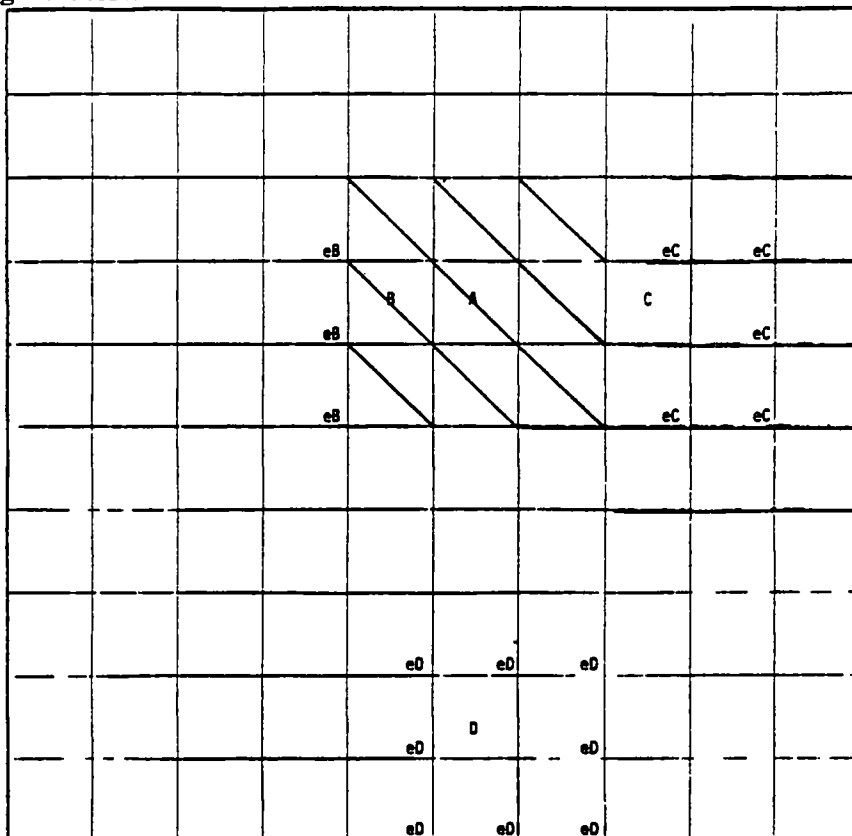
Subclause 901A 1) The general requirement to propose an operation initially to the management committee reflects the policy goal of attempting to pursue a joint strategy by communicating one's position to the other parties

ii) This provision is designed so that the operation will be conducted for the joint account if parties holding the threshold interest in Subclause 404C elect to participate in such operation at the independent operation stage of the process. If the relevant operation were the drilling of a well, the well would be drilled for the joint account if all of the receiving parties elected to participate therein. If, on the other hand, the operation were one which required less than unanimous approval pursuant to that Subclause (say, three parties holding at least 65% of the working interests), the operation would be conducted for the joint account if the proposing party and those receiving parties electing to participate in the operation satisfied that threshold.

Subclause 901B 1) The normal approval process may be circumvented when a deepening is being proposed prior to the rig release of the well because of the expense of standby time. However, the normal provisions apply when a deepening is proposed following the rig release of the well. In that event, the proposing party would have the opportunity to comply with those provisions, since that party is not subject to the same time constraints

ii) The cost of constructing a second artificial island or moving a drilling unit to and from a berm is prohibitive. If the parties were aware that a second well was contingent upon the results of the first well special considerations apply

Subclause 902A. Paragraph (a) creates a determinable section penalty. Normally, it will be a fixed section penalty. However, in the event that the parties agree to utilize the first option in subparagraph (ii), it becomes in effect a variable section penalty. In that alternative, the penalty block is a function of the proximity of the well to previous wells and could be as small as only the section on which the well is drilled. Assuming that a simple 9 maximum section penalty is utilized, the variable section penalty is illustrated in the figure below



LEGEND

- ☒ Deemed to have been evaluated by the discovery well A
B C D Section on which a delineation well was drilled
eB eC eD Previously unproven sections deemed to have been evaluated by a delineation well

8 08 Charges And Credits Allocated On Basis Of Other Interests

Notwithstanding the foregoing provisions of this Article 8 00 in the event that the context requires that charges and credits for the Joint Account shall be shared by the Parties in proportions other than their Working Interests, such charges and credits shall be shared by the Parties in the proportions of their Average Document Interests, Average Interests or Operation Working Interests, as the context may require, subject to the provisions of Article 22 00 (Arbitration)

9 00 INDEPENDENT OPERATIONS

9 01 Independent Operations Permitted

A. Party To Propose Operation Initially
To Management Committee

A Party which intends to conduct an operation upon or with respect to the Agreement Lands hereunder shall propose to the Management Committee that such operation be conducted for the Joint Account. If the Management Committee reviews such proposal and determines that such operation shall not be conducted for the Joint Account, such Party may propose that such operation be conducted as an Independent Operation pursuant to this Article 9 00. However, if Parties holding at least the threshold of Working Interests required to approve such operation for the Joint Account pursuant to Subclause 4 04C (Voting Procedure) elect to participate in such operation, such operation shall be conducted as a Joint Operation as if such matter were a decision of the Management Committee.

B. Exception To Subclause A

Notwithstanding Subclause A of this Clause 9 01, if the operation proposed to be conducted for the Joint Account is either

- (a) the Deepening of a well prior to the Rig Release of such well, or
- (b) the drilling of a Delineation Well from a berm or sacrificial island, where such well would be drilled promptly following the Rig Release of another well drilled from such berm or sacrificial island and the Operator had advised the Parties prior to the commencement of such other well that the proposal of such Delineation Well would be contingent upon the data obtained from such other well,

a Party may propose that such operation be conducted as an Independent Operation through the issuance of an Independent Operation Notice without having first proposed to the Management Committee that such operation be conducted for the Joint Account

ii) Note that the centering requirement pertains to the sections nearest in distance to the well. The resultant block may not be centered on the well if, for example, the well were located near the boundary of the agreement lands.

Paragraph (b) creates a prospect penalty whereby a non participant will forfeit a portion of its interest in the entire prospect pursuant to Subclause 9.05B.

The advantages and disadvantages of the respective delineation penalty alternatives are summarized in the chart which follows:

<u>Fixed Section Penalty</u>	<u>Variable Section Penalty</u>	<u>Prospect Based Penalty</u>
Advantages - Simple - Significant impetus for participation	Attempts to balance risk and reward. Protects participants in previous wells from significant dilution in the PPU's "evaluated" by those wells	Recognizes value of a del well to evaluation of a prospect in its entirety
Disadvantages - Party which participated in previous delineation wells receives minimal protection against subsequent dilution. However, each delineation well has arguably evaluated lands in addition to the section on which a well was located.	- Can encourage well locations on other than technical merit. - Assumes that each previous well has "evaluated" an arbitrary number of sections - Not appropriate where small prospects are economically viable	- No protection that location has any technical merit. May not be appropriate for large prospects because a test of a small portion may not be relevant to the development decision. However, may be attractive for small pools where individual wells impact more significantly on the development decision - Uncertainty in determining prospects

Subclause B 1) Note the option applicable to the stratigraphic aspect of the penalty. Proponents of the forfeiture of all rights note the complexities associated with a stratigraphic earning limitation. The land tenure and cost allocation implications of such limitations are extremely inconvenient. Moreover, there is a great deal of difficulty in accurately defining the relevant zones because of limited well control.

Those who believe stratigraphic earning limitations are appropriate base that view on a risk reward analysis of drilling. They believe that a party has not taken any risk with respect to zones deeper than those penetrated by a well, so that it should not receive any reward therein. While the independent well is extremely valuable in determining the potential of the deep rights, that indirect benefit is arguably less than the indirect value of that well to the evaluation of the shallow zones outside the areal penalty block.

The exclusion of a stratigraphic earning limitation also ignores the potential for advances in geophysical and engineering technology. Deep horizons which are not regarded as prospective at this time may be considered very attractive 20 years from now.

ii) Paragraph (a) is designed for use with a simple fixed block penalty. The benefits and disadvantages of the alternatives in that option are considered in the comment pertaining to paragraph 9.03A(b).

iii) Paragraph (b), on the other hand, is designed for use with a prospect based exploratory well penalty. However, as it is unlikely that there will be sufficient time to determine the prospect in a deepening scenario, the paragraph is structured to create a fixed block penalty for that work.

iv) Note the proviso at the end of the definition. This is included because of the practical fact that a potentially productive unit underlying a portion of the areal extent of the relevant penalty area may not be present in the well. Without such protection, the exploratory well penalty would apply to that potentially productive unit to the extent that it fell within the relevant exploratory penalty area.

9 02 Definitions Article 9 00

In this Article 9 00, the following definitions shall apply unless the context otherwise requires

- A. "Delineation Penalty Area" means those Geologic Units in which an Independent Well is a Delineation Well down to the Stratigraphic Equivalent of the depth penetrated and logged in such well in those Sections described in paragraph ____ [specify (a) or (b)] of this Subclause A, being
- (a) 1) the Section which vertically overlays the proposed bottom hole location of such well (as determined by the proposed bottom hole coordinates of such well) and
 - ii) those additional _____ Sections of the Agreement Lands the centre points of which are, subject to paragraph 9 03A(b) (Issuance Of An Independent Operation Notice), situated nearest in distance to such proposed bottom hole location (specify whether * or ** is applicable _____), ***insofar only as such additional Sections have not been included in a Well Block, / **excepting therefrom any Section containing the bottom hole location of a well previously drilled by the Parties (or any of them) which had encountered a Potentially Productive Unit, or**
 - (b) 1) the Section which vertically overlays the proposed bottom hole location of such well (as determined by the proposed bottom hole coordinates of such well) and
 - ii) those additional Sections of the Agreement Lands which overlies any portion of the areal extent of the Prospect being evaluated by such Delineation Well
- B. "Exploratory Penalty Area" means those Geologic Units in which an Independent Well is an Exploratory Well (specify whether * or ** is applicable _____) ***down to the Stratigraphic Equivalent of the depth penetrated and logged in such well / **in all Geologic Units in those Sections described in paragraph ____ [specify (a) or (b)] of this Subclause B, being**
- (a) 1) the Section which vertically overlays the proposed bottom hole location of such well (as determined by the proposed bottom hole coordinates of such well), and
 - ii) those _____ additional Sections of the Agreement Lands (specify whether * or ** is applicable _____) ***,the centre points of which are, subject to paragraph 9 03A(b) (Issuance Of An Independent Operation Notice), situated nearest in distance to such proposed bottom hole location, / **which are laterally or diagonally adjacent to such Section and which are specified by the Proposing Party in the Independent Operation Notice respecting such well, provided that such selection shall**

Subclause C. There had been a tendency to define an independent operation solely in terms of drilling
That type of definition can present mechanical problems

Subclause H. The last phrase is only included because a party which elects to participate in an
independent operation would otherwise have no status prior to the commencement of the operation.

be made in such manner as to maximize the number of Sections which overlie the Prospect to be penetrated by such Exploratory Well, or

- (b) 1) the Section which vertically overlays the proposed bottom hole location of such well (as determined by the proposed bottom hole coordinates of such well), and
- ii) those additional Sections of the Agreement Lands which overlie any portion of the areal extent of the Prospect to be penetrated by such Exploratory Well, or, insofar as such well is an independent Deepening as described in Subclause 9 01B (Exception To Subclause A) or the Proposing Party so elects pursuant to paragraph 9 03A(c) (Issuance Of An Independent Operation Notice), those _____ additional Sections of the Agreement Lands, the centre points of which are, subject to paragraph 9 03A(b) situated nearest in distance to such proposed bottom hole location,

Provided that in the event any such Section is included in a Discovery Area at the time of the issuance of the Independent Operation Notice respecting such well only those Geologic Units of such Section deeper than the deepest Potentially Productive Unit contained in such Section may be included in the Exploratory Penalty Area respecting such well

- C **"Independent Operation"** means any operation conducted pursuant to this Operating Procedure which is conducted by less than all of the Parties holding Working Interests in that portion of the Agreement Lands upon or with respect to which such operation is being conducted
- D **"Independent Operation Notice"** means a notice of intention to conduct an Independent Operation
- E **"Independent Well"** means that well or portion of a well, as the case may be, with respect to which an Independent Operation is conducted
- F **"Non Participant"** means a Party which does not participate in an Independent Operation and which holds a Working Interest or Operation Working Interest, as the case may be in that portion of the Agreement Lands upon or with respect to which such Independent Operation is being conducted
- G **"Participating Interest"** means the percentage of participation of a Participant in an Independent Operation, as determined pursuant to this Article 9 00
- H **"Participant"** means a Party participating in an Independent Operation, or, with respect to the period prior to the commencement of an Independent Operation a Party which has elected to participate in such operation

Subclause K. The term of a typical exploration licence issued under legislation in the form of the Canada Petroleum Resources Act will comprise two periods. The explorer will generally be obligated to drill at least one well to continue the lands subject to the licence beyond the end of the first period (i.e., year 4). If the exploration licence is continued into the second period, all lands remaining subject to the document will revert to the grantor at the end of the second period, except for those included in a discovery area. Since the explorer has the option to continue the lands into the second period by drilling, the reversion date is only at the end of the second period. The reversion date, of course, would be earlier if the interest holders elected not to fulfil outstanding obligations under the document.

Subclause M 1) This definition is only used in conjunction with the variable block penalty alternative in the definition of delineation penalty area. If that mechanism is not used, the definition is inapplicable.

ii) Note that the provision includes a stratigraphic component. A well does not protect any potentially productive units which are not evaluated by that well.

Paragraph 903A(a) A proposing party would probably be willing to provide a technical presentation respecting a well upon request of a party in many cases, so as to encourage the other parties to assume a share of the risk. However, it is probably preferable not to include this obligation in the document. A party should under no circumstances be required to disclose data or interpretations it had obtained for its own account. Moreover, it is important to remember that the parties are ultimately competitors. While the document encourages the parties to discuss their plans in a frank and timely manner, some of the parties may rely on other parties to do their evaluations for them and contribute nothing to the discussions. In addition, such a provision ignores the possibility that the party may have developed a regional model such that a detailed disclosure of its rationale for the well may damage its competitive position respecting other lands.

However, a technical justification may be required if penalties are dependent on the determination of the prospect and there is a dispute respecting the lands which overlie the prospect.

Paragraph 903A(b) 1) The definitions of delineation penalty area and exploratory penalty area both include a centering provision where the penalty is not dependent on the determination of the prospect.

The advantage of a centering requirement is its certainty. Its disadvantage is the unfortunate geologic fact that not all wells are drilled on the crest of a domal feature. In many cases, a centering requirement could reward the participants with lands which they do not regard as prospective and could encourage a party to propose a well at other than the optimal location.

The definition of exploratory penalty area, however, includes a simple alternative whereby the proposing party would designate its own penalty block of x laterally or diagonally adjoining sections including the well site.

While that mechanism has a practical attraction, it is difficult to support theoretically because of the practical fact that other parties may assume penalty expenses. The penalty they receive would have been selected by only the proposing party, even though the proposing party may ultimately only participate for its working interest share of costs.

Although the mechanism in that alternative includes a simple requirement for the proposing party to select firstly sections which overlie the prospect, there is nothing to prevent the proposing party from then selecting the most prospective adjacent lands.

The alternative whereby the participants select the penalty block is an unacceptable principle, simply because no party should be required to make its election until it knows the precise penalty applicable to non-participation.

The most practical manner to address that problem would be to try to negotiate a different arrangement in any particular case in which the centering requirement would create an inequitable result.

Notwithstanding the theoretical deficiencies associated with a proposing party designating the sections to be included in a penalty block, the selection by the proposing party of sections which are equi-distant is the most expedient manner to address the problem in this paragraph.

ii) Note that the penalty area hereunder is dependent on the proposed bottom hole location. The penalty area is not adjusted if the actual location differs.

- I "Proposing Party" means the Party giving an Independent Operation Notice
- J "Receiving Party" means a Party receiving an Independent Operation Notice
- K "Reversion Date" means that date on which all lands subject to a Document of Title, other than those lands included in a Discovery Area, must revert to the grantor of such Document of Title pursuant to the provisions of such Document of Title or the Regulations, or such earlier date as such lands actually revert to such grantor
- L "Stratigraphic Equivalent" means the subsea depths of a Geologic Unit occupying a similar stratigraphic position, as determined by lithology, well log characteristics geophysically correlatable events, biostratigraphy or other age dating techniques
- M "Well Block" means, with respect to a well previously drilled on the Agreement Lands which has penetrated and logged at least one Potentially Productive Unit, the Section which vertically overlays the bottom hole location of such well (as determined by the bottom hole coordinates of such well) and those additional _____ Sections of the Agreement Lands, the centre points of which are situated nearest in distance to such bottom hole location, subject to paragraph 9 03A(b) (Issuance Of An Independent Operation Notice) to the base of the deepest Potentially Productive Unit penetrated and logged by such well

9 03 Proposal Of Independent Operation

A. Issuance Of An Independent Operation Notice

- (a) Subject to Clause 9 01 (Independent Operations Permitted) and Subclause E of this Clause 9 03, a Party may, at any time, give an Independent Operation Notice to the other Parties, stating in such Independent Operation Notice (i) the nature of the proposed Independent Operation, including a drilling prognosis, if applicable, (ii) the proposed location of such operation, (iii) the anticipated time of commencement and estimated duration of such operation, (iv) the Drilling Unit to be utilized in conducting such operation, if known, (v) the classification of such operation, if applicable, as an Exploratory Well or a Delineation Well, (vi) a description of the Agreement Lands which comprise the Delineation Penalty Area or the Exploratory Penalty Area, as the case may be, and the percentage loss of Working Interest therein applicable to non-participation with respect to such operation, if any, and (vii) the estimated cost of such operation in the form of an A.F.E., in sufficient detail to enable the Receiving Parties to identify, in summary form, the estimated costs of the various aspects of such operation
- (b) If the proposed operation is the drilling of a well and the centre points of two (2) or more Sections of the Agreement Lands which could be included in the Exploratory Penalty

Paragraph A(c) i) This paragraph would only be used where the exploratory well penalty is dependent on the determination of the prospect

The purpose of the paragraph is to provide a mechanism for the determination of the prospect and operation working interests (if applicable) prior to the time when the receiving parties must reply to the notice

ii) In the event there is no consensus respecting the prospect or operation working interests the proposing party has the right to opt for the fixed section penalty. Although less than desirable in theory because the proposing party has the unilateral right to trigger the mechanism, the exclusion of this provision may allow a party to frustrate a well

iii) In practice the requirement to provide a technical justification for the suggested prospect may not be desirable when the proposing party has developed its own play, wishes to maximize its interest and believes that there is a significant possibility that the technical justification might encourage other parties to participate in the well. In such circumstances, it may be attractive to provide a simple justification so that it may opt simply for the fixed block penalty

Subclause B i) Paragraph (a) is based on the fundamental principle that no party should be expected to reply to an independent operation notice until the penalty applicable to non-participation with respect thereto has been determined. To include a mechanism whereby a party is required to elect before it knows either the configuration of the penalty block or the interest to be forfeited is analogous to determining the percentage of the production penalty under the conventional CAPL Operating Procedure after the parties have made their elections!

The combination of paragraph (a) and paragraph (c) of Subclause A requires the party intending to propose an independent well to communicate that intention to the other parties at an early date where there is a prospect based penalty

Area or the Delineation Penalty Area applicable to such well, as the case may be, are equally distant from the proposed bottom hole location of such well (as defined by the proposed bottom hole coordinates of such well) such that the inclusion of all of such Sections therein would result in there being a total number of Sections therein greater than the number provided for in this Article 9 00, the Proposing Party shall state in the Independent Operation Notice pertaining to such well those of such equally distant Sections which shall be included in the Exploratory Penalty Area or the Delineation Penalty Area, as the case may be

- (c) If (i) an Independent Operation Notice is with respect to the drilling of a well (ii) the penalty area applicable to non participation with respect thereto is dependent on the determination of the Prospect to be penetrated by such well, and (iii) such penalty area or, if applicable, the Operation Working Interests of the Parties with respect to such well has neither been agreed upon by the Parties nor determined pursuant to Article 22 00 (Arbitration) in the one (1) year period prior to the issuance of such Independent Operation Notice, unless new information has become available since such determination which reasonably indicates that such determination is no longer accurate, such Independent Operation Notice shall also contain the Proposing Party's suggested penalty area the Proposing Party's suggested Operating Working Interests if applicable, a summary of the Proposing Party's technical justification for such suggestions and notice of a meeting to be held in the Proposing Party's Calgary office not earlier than ten (10), but not later than thirty (30), days following the receipt of such Independent Operation Notice by the Receiving Parties, to attempt to determine such penalty area and, if applicable the Operation Working Interests, or either of them In the event the Parties are unable to agree on the configuration of such penalty area or, if applicable, such Operation Working Interests within five (5) days following such meeting, such Independent Operation Notice shall be void unless (i) the Proposing Party gives a notice pursuant to Clause 22.01 (Submission Of Certain Matters To Arbitration) that it wishes such determination referred to arbitration, or (ii) insofar as such dispute is with respect to an Exploratory Well, the Proposing Party elects to include in such Exploratory Penalty Area those additional Sections specified in subparagraph 9 02B(b)(ii) (Exploratory Penalty Area)

B Reply To Independent Operation Notice

- (a) A Receiving Party shall be deemed to have elected not to participate in the operation proposed in an Independent Operation Notice unless, within thirty (30) days of the receipt of such Independent Operation Notice, it has given notice to the Proposing Party and the other Receiving Parties that it elects to participate in such operation Notwithstanding the foregoing sentence, in the event an Independent Operation Notice requires a determination of the relevant penalty area or the Operation Working Interests of the Parties (if applicable) pursuant to paragraph A(c) of this Clause 9 03, a Receiving Party may give

ii) One possibility which was considered was to lengthen the response period with respect to wells which had not been included in an approved forecast, in order to attempt to minimize the possibility that the parties would receive notices respecting unanticipated wells. Given the operating window, the impact on other independent operations and the practical business considerations associated with a strategy of surprising the other parties with a well proposal in practice, the cost of that mechanism seemed to outweigh the benefits.

Subclause C The traditional election provision provides that a party elects to participate either for its working interest or for its proportionate share of costs.

That type of mechanism is not desirable, since a party which wishes to participate in the operation must elect either to participate only to the extent of its working interest or to make an open ended election.

Subclause C creates far more flexibility in that it allows a party to place a limit on the maximum additional interest it is prepared to accept.

Paragraph (a) applies to all independent operations other than described in Subclause 9.01B. In essence, the provision states that the issuance of an independent operation notice or an election to participate is only with respect to that party's interest. Following the receipt of those elections, each party which elected to participate in the operation will have the opportunity to make a second election to increase its interest in the operation.

The advantage to this course is that a party will be able to make its second election when it knows the identity of the other participants. This is particularly beneficial to small companies, which may be able to obtain approval to acquire an additional interest on the basis that A, B and C are also participating.

The corresponding disadvantage is that it may not enable a party to maximize its interest in a project if its decision were to influence one or more of the other parties.

Given that the parties are not subject to any timing constraints and that the inclusion of a single election might provide an incentive for parties to mask their true intentions, the two stage process seems preferable because of its flexibility.

such notice within twenty (20) days following such determination or such thirty (30) day period, whichever is the later

- (b) Notwithstanding paragraph (a) of this Subclause B, if the proposed operation is the Deepening of a well as described in Subclause 9 01B (Exception To Subclause A) or the drilling of a Delineation Well, as described in paragraph 9 01B(b), the time period prescribed in paragraph (a) of this Subclause B shall be reduced to thirty six (36) hours or _____ days respectively, during which period all incremental expenses incurred as a consequence of the issuance of such Independent Operation Notice, including, without limiting the generality of the foregoing, standby time, shall be for the account of the Proposing Party, and, if conducted, the Participants in such operation

C Determination Of Participating Interests

- (a) Unless an Independent Operation Notice is with respect to an operation described in Subclause 9 01B (Exception To Subclause A), an Independent Operation Notice and any election by a Receiving Party to participate in the operation proposed therein shall be the election of the Proposing Party or such Receiving Party, as the case may be, to participate in such operation initially only to the extent of its Working Interest or Operation Working Interest, as the case may be Within ten (10) days of the earlier of the receipt of the elections of the Receiving Parties or the expiry of the time period described in paragraph B(a) of of this Clause 9 03, the Proposing Party and each Receiving Party which had elected to participate in such operation shall give notice to the other Parties whether it elects to participate in such operation
 - i) only to the extent of its Working Interest or Operation Working Interest, as the case may be, or
 - ii) to the extent of its Working Interest or Operation Working Interest, as the case may be, increased by its proportionate share of the unassumed percentage of participation respecting such operation, with a limitation as to the maximum amount of such increased participation such Party is prepared to accept, or
 - iii) to the extent of its Working Interest or Operation Working Interest, as the case may be, increased by its proportionate share of the unassumed percentage of participation respecting such operation,

Provided that any such Party which either fails to give such notice within such time or which fails to specify the extent of its proposed participation in such notice shall be deemed to have made the election described in subparagraph (i) of this paragraph (a)

Paragraph (b) applies to the operations described in Subclause 9 01B. Since time is of the essence, as indicated by the response periods in paragraph 9 03B(b), the parties do not have the luxury of a second election.

Paragraph (c) This provides the parties with a limited time to allocate an unassumed interest. If the parties are unable to agree to assume that interest within that time, the independent operation notice will be deemed to have been withdrawn.

Subclause D Few will dispute the principle that a non participant should be permitted to participate in an independent deepening.

However, the mechanism whereby that party may elect to participate in such deepening may be contentious.

There are two major alternatives.

One is that the party may only participate if it pays its share of the up-hole cost of the well.

The other would be to structure the provision so that the party has no direct responsibility for the up hole costs, as it has already contributed a portion of its interest in support of the well.

The provision in the document is a compromise because it enables the parties to negotiate the responsibility of a non participant for up hole costs. If for example, the parties believed that the second position were correct, the percentage would be stated to be zero.

Note that the subsequent participation of a non participant in the deepening would not relieve such party from the penalty applicable to its non participation with respect to the up-hole portion of the well.

(b) In the event an Independent Operation Notice is with respect to an operation described in Subclause 9 01B (Exception To Subclause A), the Proposing Party and each Receiving Party electing to participate in such operation shall state in such Independent Operation Notice or election, as the case may be, whether it is prepared to participate in such operation

- i) only to the extent of its Working Interest or Operation Working Interest, as the case may be, or
- ii) to the extent of its Working Interest or Operation Working Interest, as the case may be, increased by its proportionate share of the unassumed percentage of participation respecting such operation, with a limitation as to the maximum amount of such increased participation such Party is prepared to accept, or
- iii) to the extent of its Working Interest or Operation Working Interest, as the case may be, increased by its proportionate share of the unassumed percentage of participation respecting such operation,

Provided that a Party which does not specify the extent of its proposed participation in such Independent Operation Notice or election, as the case may be, shall be deemed to have made the election described in subparagraph (i) of this paragraph (b)

(c) If, after the process described in paragraph (a) or (b) of this Subclause C, as the case may be, there remains an unassumed percentage of participation respecting the operation proposed in an Independent Operation Notice, such Independent Operation Notice shall be deemed to have been withdrawn by the Proposing Party unless those Parties electing to participate in such operation otherwise agree to assume such unassumed percentage of participation within five (5) days or twelve (12) hours of the completion of such process as the case may be, depending on whether paragraph (a) or (b) respectively of this Subclause is applicable

D Non Participant s Right To Participate In Deepening

If the operation to which an Independent Operation Notice pertains is the Deepening of a well which had been drilled as an Independent Well, in whole or in part, each Non-Participant with respect to such Independent Well shall have the right to participate in such Deepening. However, each Non Participant which elects to participate in such Deepening shall reimburse the Participants in such Independent Well for _____% of such Non Participant s Working Interest share or Operation Working Interest share, as the case may be, of the cost of drilling such Independent Well, insofar only as such costs are not with respect to the logging, coring and testing of the Geologic Units in which such well was an Indepen

Subclause E. i) This Subclause attempts to balance the need to be protected from premature operations with the need to maximize land retention with an orderly exploration program

ii) The time period in paragraph (b) would be negotiated in each agreement to reflect the different work seasons

iii) Paragraph (c) literally prevents a party from deepening a well. In practice, though, it provides that the right of a party to protect its discovery is greater than that of a party to pursue its own course of action. There is certainly nothing to prevent the proposing party from attempting to obtain the consent of the other parties to the deepening, and they would likely consent in the absence of legitimate concerns

There are three major concerns which may be associated with such a deepening, as follows

Firstly, there is a risk that the discovery horizon may be damaged by the deepening. An obligation to indemnify and to assume liability is of little comfort if the deepening party is struggling to acquire insurance on short notice or has dubious financial resources. Moreover, there is a possibility that the deepening could jeopardize the existing insurance coverage, since it represents a material change from the risk assumed by the insurer.

Secondly, there may be safety concerns associated with the deepening - the well may have been engineered for only a certain depth.

Thirdly, the conduct of the deepening could interfere with the testing program for the joint interval something which is particularly relevant if there are seasonal work restrictions or offsetting acreage that had been posted to the well.

iv) Note the references to a title preserving well, a similar well and an exploratory well drilled a specified time prior to the reversion date. Ignoring transitional exploration licences derived from former exploration agreements, the title preserving well and similar well are relevant to only the first period of the term of an exploration license issued under legislation in the form of the Canada Petroleum Resources Act. The exploratory well drilled prior to the reversion date is only relevant to the second period of such an exploration licence.

Because of the differences in the terms of exploration licences and the variations in operating conditions a blank has been included so that the parties can tailor the limitation respecting the reversion date to satisfy their particular requirements.

v) Note the stipulation in (d) to minimize the number of wells which may be drilled hereunder at any one time. If the Agreement Lands comprise a large amount of acreage this restriction may not be appropriate.

dent Well Participation in such Deepening shall, however, not affect any prior obligation of such a Non Participant to forfeit an interest hereunder with respect to such Geologic Units by virtue of its non participation with respect to such Independent Well

E. Limitations On The Issuance Of An Independent Operation Notice

- (a) No single Independent Operation Notice shall relate to more than one proposed Independent Operation
- (b) No Independent Operation Notice may be issued with respect to an operation which is estimated to be commenced later than _____ months following the issuance of such Independent Operation Notice
- (c) No Independent Operation Notice may be issued with respect to the proposed Deepening of a well if such well has penetrated what reasonably appears to be a Potentially Productive Unit.
- (d) Other than with respect to (i) a Title Preserving Well or Similar Well (both as defined in Clause 9 06 Wells Which Maintain Title), ii) an Exploratory Well proposed to be drilled not earlier than _____ days prior to the Reversion Date of the Document of Title which includes the proposed location of such well, or (iii) the Deepening of a well or the drilling of a Delineation Well, where Subclause 9 01B (Exception To Subclause A) is applicable, a Party shall not be entitled to issue an Independent Operation Notice respecting the drilling of an Independent Well when
 - i) a well is currently being drilled on the Agreement Lands,
 - ii) the Parties have approved the drilling of a well for the Joint Account, other than in a Forecast, or
 - iii) another Independent Operation Notice respecting the drilling of an Independent Well has been issued, until such time as either such notice has been withdrawn or the operation described therein has been completed, or
 - iv) the proposed location of such well is within _____ kilometres of a well with respect to which a Party is then being denied information pursuant to paragraph 9 08E(b) (Information), if such Party would be subject to the forfeiture of a portion of its Working Interest hereunder for failure to participate in such proposed well

Subclause F In the event the proposing party represented that the operation was to be conducted during a particular operating season, the other parties may have made their elections on the basis of that representation. The proposing party is therefore obligated to conduct the operation at the represented time if it proposes to conduct the operation under that notice

Subclause G A well may be in part a delineation well and in part an exploratory well. In such circumstances, it is generally accepted that a joint operating agreement should permit a party to limit its participation in the well to that portion which is a delineation well.

A suggestion might be made that the mechanism should be extended to allow a party to limit its participation in an exploratory well to the V formation when the well is intended to evaluate the Z formation

The practical implications of such an extension, however, are worrisome. Moreover, the suggestion ignores the rationale for the inclusion of the separate status election mechanism, namely that it would be unfair to deny a party the right to participate in the evaluation of a discovery because it was not prepared to participate in unrelated exploratory drilling.

Subclause A. 1) This provision would have limited application if such work could be conducted for the joint account through less than unanimous approval of the management committee.

2) To encourage participation in these operations, it may be desirable to provide that non participants have no rights whatsoever with respect to the information obtained therefrom. In the alternative, it may be desirable to provide the non participants with a limited right to obtain that data in recognition that they will probably benefit from that information indirectly anyway.

F Limit On Commencing Independent Operation

Subject to the provisions of Article 13 00 (Force Majeure), an Independent Operation may be commenced at any time not later than _____ months from the issuance of the Independent Operation Notice pertaining to such Independent Operation and thereafter conducted diligently, unless such notice specified that such operation was to be conducted during a particular operating season, in which case such operation shall be conducted during such operating season. In the event such Independent Operation has not been commenced within such time period, such Independent Operation Notice shall thereupon be deemed to have expired, and such Independent Operation shall not be conducted pursuant thereto.

G Separate Election Where Well Status Divided

- (a) If the proposed Independent Operation is the drilling of a well which could be in part an Exploratory Well and in part a Delineation Well, the Proposing Party shall so indicate in the Independent Operation Notice respecting such operation. Insofar as it can do so in such Independent Operation Notice, such Party shall estimate the costs separately for each portion of such well pursuant to Subclause 9 08G (Allocation Of Well Costs When Participation In Well Differs).
- (b) A Receiving Party which gives notice of its intention to participate in a proposed Independent Well described in paragraph (a) of this Subclause G shall specify in its election whether it participates in such well to the extent only that it is a Delineation Well or in the entire well. In the event a Party which elects to participate in such well does not specify the extent of its participation in its election, such Party shall be deemed to have elected to participate in the entire well.
- (c) If all Receiving Parties elect to participate in such well insofar as it is a Delineation Well, but not all Receiving Parties elect to participate in such well as an Exploratory Well, such well shall be drilled for the Joint Account to the extent to which it is a Delineation Well and as an Independent Operation to the extent to which it is an Exploratory Well.

9 04 Conduct Of Independent Operation Other Than Drilling

A. Non Participants Not To Receive Information

If an Independent Operation is the conduct of an environmental, engineering or socioeconomic study or the conduct of a geophysical or geological operation (other than drilling), a Non-Participant with respect thereto (specify whether * or ** is applicable ____) *shall not be entitled to receive any information hereunder respecting such Independent Operation. /
 **shall have the right, prior to the end of the calendar year following the calendar year in

Subclause B In the event that the parties anticipate that they will be drilling several wells over a one or two year period, it may be more efficient to conduct the site surveys for those locations as a single project. If a party elects not to participate in a site survey conducted before the well is proposed that party is precluded from participating in the well unless it reimburses the participants in the site survey 200% of its share of the cost of the relevant site survey.

Clause 9.05 The fundamental tool in setting penalties for voluntary drilling operations is risk reward analysis. The penalty attributable to non participation respecting such an operation should reflect the risk associated with that operation. Examples of material factors to this determination are: regional well control, assessment of prospectivity, the prospect (or type of prospect i.e., X section \pm) anticipated to be evaluated, risk, costs, operating environment, duration of tenure, perception of economics, availability of incentives to the consortium generally and (?) the incentive for the operator to propose operations to utilize its equipment. Immaterial factors to this determination are such items as: the number of participants in the operation and their working interests, the tax positions of individual parties and the availability of additional incentives to individual parties (i.e., PIPs, super depletion, etc.).

Subclause A 1) The percentage loss of interest is an option and there are three basic alternatives:

Firstly, there could be a 50% forfeiture, in essence a forced farmout whereby a party contributes a portion of its interest for the well.

Secondly, there could be a 100% forfeiture, in recognition that a non participant takes no risk with respect to the operation. This would require a non participant to retain responsibility for its own share of costs. In many cases, the risk and cost is such that a party may not be prepared to acquire any additional interest on even a straight up basis.

Thirdly, the parties could negotiate a percentage between those two alternatives.

ii) Note the reference to the independent operation described in the operation notice and the rig release of such well. Suppose that the drilling program were not conducted in accordance with the independent operation notice. Would those participants earn? Given that an operation may differ from that described in an independent operation notice in costs, timing and location/depth and that the differences may be material or of little consequence, the answer would depend on the type and degree of the deviation.

As a general rule, immaterial differences in timing or costs should not affect earning because of their dependency on external factors. Similarly, a material difference in costs would probably not affect earning if the original cost estimate had been reasonable in the circumstances and the participants had no reason to revise the estimate prior to the commencement of the operation.

Where, on the other hand, the participants have (or should have) knowledge of developments which would materially alter the costs or timing of the independent operation, the validity of the independent operation notice might be jeopardized if those changes might have influenced the non participants to elect to participate in that operation (i.e., well delayed until succeeding drilling season or a rig contract with a much lower day rate than that represented to the parties).

Similar considerations apply to such technical factors as location and depth.

If the operation is, in essence, a different operation from that proposed, there is probably a duty on the participants at law to advise the non participants of such a change promptly and to allow them the opportunity to re-elect to participate in the operation, even if it has already been commenced. The rationale for that position is simply that the parties should be in the same position as that in which they would have been had the operation been so proposed initially.

This, of course, also raises an interesting question respecting the obligations of the operator/proposing party to the other participants in the event there was no earning.

Note that this issue is also relevant to joint operations. See, for example, Passburg Petroleum v San Antonio Explorations Ltd and D W Axford & Associates Ltd, [1988] 2 W W R 645 (Alta Q B).

iii) Note the reference to the interest in the penalty area at the time of the issuance of the notice respecting the well. This ensures the participants that the non participants will not otherwise dispose of their interest therein during the drilling of the well.

which such Independent Operation was completed, to purchase a copy of the basic information obtained from such Independent Operation which would have been provided to it pursuant to Clause 6.17 (Submission Of Information To Parties), by paying to the Participants therein Two Hundred percent (200%) of what such Party's share of the cost of such operation would have been had it been conducted for the Joint Account. Subject to Article 15 00 (Confidential Information), ownership of all rights to such information, including all trading rights respecting information obtained from such Independent Operation shall be the sole property of the Participants therein

B Non-Participation Site Survey

Notwithstanding anything to the contrary contained in this Operating Procedure in the event a site survey conducted as an Independent Operation hereunder is a prerequisite for governmental authority to drill a well hereunder, a Non Participant with respect to such site survey which wishes to participate in such well may not participate in such well unless it reimburses the Participants in such site survey an amount equal to Two Hundred percent (200%) of what its share of the cost of such site survey would have been had such operation been conducted for the Joint Account.

9 05 Penalty For Independent Drilling

A. Penalty For Independent Exploratory Well

Subject to Clauses 9 06 (Wells Which Maintain Title) and 9 07 (Application Of Forfeitures To Other Sub Areas), if the Independent Operation proposed in an Independent Operation Notice is the drilling of a well to penetrate one or more Geologic Units in which such well is an Exploratory Well, each Non Participant with respect thereto shall, upon the Rig Release of such well and satisfaction of the obligations to the Non Participants hereunder with respect thereto by the Participants in such well, thereupon forfeit to such Participants ____% of the Working Interest it held in the Exploratory Penalty Area applicable to such well at the time of the issuance of the Independent Operation Notice respecting such well

B Penalty For Independent Delineation Well

Subject to Clauses 9 06 (Wells Which Maintain Title) and 9 07 (Application Of Forfeitures To Other Sub Areas), if the Independent Operation proposed in an Independent Operation Notice is the drilling of a well to penetrate one or more Geologic Units in which such well is a Delineation Well, each Non Participant with respect thereto shall upon the Rig Release of such well and satisfaction of the obligations to the Non Participants hereunder with respect thereto by the Participants in such well thereupon forfeit to such Participants the interest described in paragraph ____ [specify (a) or (b)] of this Subclause B, being

Paragraph B(a) This would primarily be used for the determinable section delineation penalty area created by paragraph 9 02A(a). However, it can also be used with the prospect based penalty area created by paragraph 9 02A(b), in the event that the parties prefer an arbitrary percentage to the utilization of the formula provided in paragraph (b) of this Subclause.

Paragraph B(b) This alternative would be used where the delineation penalty area is dependent on the determination of the prospect and the parties believe that the interest to be forfeited should be a function of the size of the prospect and the number of previous wells drilled to evaluate the discovery, rather than the arbitrary percentage provided for in (a). It is premised on two major assumptions: 1) that risk decreases as additional wells are drilled on a prospect, and (ii) that a subsequent well on a small prospect provides more information respecting that prospect than does a subsequent well on a large prospect. To illustrate the application of the formula, two cases have been included:

<u>Delineation Well</u>	Case 1 54 Section Prospect (Hibernia)		Case 2 - 15 Section Prospect	
	<u>2S</u>	<u>5S</u>	<u>2S</u>	<u>5S</u>
1	29.2%	13%	<37% or Max. %	<32.5% or Max. %
2	25.2%	>9% or Min. %	<33% or Max. %	<28.5% or Max. %
3	21.2%	Min. %	<29% or Max. %	<24.5% or Max. %
4	17.2%	Min. %	25%	20.5%
5	13.2%	Min. %	21%	16.5%
6	>9.2%	Min. %	17%	12.5%
	or Min. %			

The blank just indicates the degree to which the size of the prospect will reduce the size of the penalty. If, for example, 2 is inserted in the blank, the reduction factor will only be 20% of the number of sections (2XS).

Subclause 9 05C. i) The exploratory well penalty and the delineation well penalty would apply in the respective intervals in which such deepened well is an exploratory well or delineation well.

ii) In the event a prospect based exploratory well penalty had been selected and the deepening is prior to the rig release of the well, the penalty becomes a fixed section forfeiture because of the difficulties inherent in attempting to agree on a prospect on short notice.

- (a) _____ % of the Working Interest it held in the Delineation Penalty Area applicable to such well at the time of the issuance of the Independent Operation Notice respecting such well, or
- (b) that percentage of Working Interest it held in the Delineation Penalty Area applicable to such well at the time of the issuance of the Independent Operation Notice respecting such well as determined pursuant to the following formula

$$PI = 40 - (\text{____}XS) \quad 4Y$$

Where

PI is that percentage of the Working Interest of a Non Participant which is to be forfeited in the Delineation Penalty Area by such Party,

The blank is filled by a number greater than one and less than one hundred

S is the number of Sections contained in the Delineation Penalty Area, and

Y is the number of Delineation Wells previously drilled hereunder to evaluate the Prospect being penetrated by such Delineation Well,

Provided that the percentage of a Non Participant's Working Interest to be forfeited pursuant to this paragraph (b) shall not exceed ____% or be less than ____%

C Penalty For Independent Deepening

Subject to Clauses 9 06 (Wells Which Maintain Title) and 9 07 (Application Of Forfeitures To Other Sub-Areas) and Subclause 9 08G (Allocation Of Well Costs When Participation In Well Differs), if the Independent Operation is the Deepening of a well or the deemed Deepening of a well pursuant to Subclause 6 01G (Approval Mechanism For Supplementary A.F.E.'s Drilling), the provisions of Subclause A or Subclause B of this Clause 9 05, as the case may be, shall apply to the extent that such Independent Well penetrates Geologic Units in which such well is an Exploratory Well or a Delineation Well respectively

9 06 Wells Which Maintain Title

A. Definitions

In this Clause 9 06, the following definitions shall apply, unless the context otherwise requires

Paragraph A(a) 1) A discovery area well can be drilled during either period of an exploration licence

ii) A subsequent delineation well could also result in the expansion of a discovery area. Given the limited degree to which regulatory authorities have been amenable to expansions of discovery areas (generally 2 or 3 sections, where applicable) and the complexities associated with attempting to assess the degree to which an individual delineation well has resulted in the expansion of a discovery area, expansions have been ignored.

Paragraph A(c) The residual interest is analogous to a floating charge in that it applies to whatever interest the non validating party retains in the validated lands until the time the interest is to be forfeited. As indicated in Subclause 9.06C, the normal penalties in Clause 9.05 continue to apply with respect to non participation in subsequent wells.

Paragraph A(d) 1) Note that the similar well may be either a joint well or an independent well.

ii) Note the nature of the similarity and the utilization of well classifications in the provision. A similar well, of course, must be drilled in such a manner that it would have satisfied a drilling obligation had the title preserving well not been drilled. If the title preserving well were required to be drilled prior to any specific time or at any particular location, the similar well would also have to satisfy those conditions.

In addition, though, that well should be of the same type as was required to satisfy that obligation. Otherwise the "had the title preserving well not been drilled" proviso might enable a delineation well with respect to a title preserving well discovery to qualify as the similar well with respect to that drilling requirement. If the discovery well had not been drilled, the second well would have been an exploratory well by that test.

Paragraph A(e) Transitional documents arising out of exploration agreements negotiated under legislation in the form of the Canada Oil and Gas Act occasionally include a mechanism whereby the explorers may delay the commencement of a required well by posting a deposit prior to a specified date.

This provision states that a well which is drilled to fulfil that requirement is to be regarded as a title preserving well, even though the drilling of that well could have been delayed by the posting of a drilling deposit. However, the date by which the parties could drill a similar well will be tied to the date by which the well would have to be drilled had the deposit been posted.

To illustrate, assume that A, B and C hold an exploration licence arising out of an exploration agreement negotiated under the previous land tenure regime. That exploration licence has a four year term and the requirement to commence one well prior to the end of the second year, subject to the proviso that where that well has not been commenced by that time, the parties may maintain the exploration licence for a third year by posting a \$5 MM deposit to secure the drilling of the well in the third year. A proposes to drill the well in the second year while B and C prefer to post the deposit and drill in the third year. If the well proceeds as proposed and B and C elect not to participate, the well would be a title preserving well as regards B and C. B & C would be required to participate in a similar well by the end of the third year to maintain their interests.

- (a) "Discovery Area Well" means a well which has resulted in the creation of a Discovery Area whereby the Document of Title pertaining to that portion of the Agreement Lands contained in such Discovery Area is able to be maintained in force by the Parties or any of them, beyond the Reversion Date of such Document of Title
- (b) "Non-Validating Party" means a Party which was a Non Participant with respect to a Title Preserving Well
- (c) Residual Interest means at any point in time and after the application of the applicable penalty or penalties contained in Clause 9 05 (Penalty For Independent Drilling) in accordance with Subclause 9 06C (Failure To Participate In Subsequent Independent Operations) the entire Working Interest then retained by a Non Validating Party in the Validated Lands
- (d) "Similar Well" means an Exploratory Well or a Delineation Well as the case may be, which had the Title Preserving Well which satisfied the drilling requirement described in paragraph (e) of this Subclause A not been drilled, would have satisfied such requirement provided that if the particular Document of Title specifically required the drilling of an Exploratory Well or a Delineation Well, as the case may be, the Similar Well shall be of a type which would have satisfied such requirement and that if the drilling of the Title Preserving Well before a specified date relieved the Parties of the obligation to post a bond with governmental authorities by such date to secure the drilling of such Title Preserving Well the Similar Well shall be drilled by such time as would have been permitted for the recovery of such deposit had it been submitted
- (e) "Title Preserving Well" means an Exploratory Well or a Delineation Well as the case may be, the drilling of which satisfies an outstanding drilling requirement in a Document of Title or under the Regulations, where failure to satisfy such drilling requirement would result in the forfeiture of the Agreement Lands subject to such Document of Title, in whole or in part, to the grantor of such Document of Title
- (f) "Validated Lands" means any Agreement Lands subject to a Document of Title which would have been forfeited to the grantor of such Document of Title had a Title Preserving Well not been drilled, or so much thereof which are held by the Parties or any of them, at the time of the drilling of a Similar Well or at the end of that period of such Document of Title which had included the obligation to drill the Title Preserving Well(s) as the case may be
- (g) "Validating Party" means a Party which participates in a Title Preserving Well

One may argue that B and C should be required to drill a similar well before the end of the second year since the option to post a deposit is irrelevant. However, that view ignores the fact that A's well would, in fact, impose on B and C a greater obligation than had been prescribed by the end of the second year to drill the well or post the deposit.

Although B and C would benefit from A's well in that they would be able to avoid the requirement to post a deposit, it is important to recall that they obtain this benefit at no cost to A.

Subclause B 1) The validating parties may require trust agreements or assignments in certain circumstances to protect their rights to the residual interest. Although trust documentation would generally not be requested in practice, the right to require an assignment in trust is necessary to protect the validating parties from subsequent third party purchasers for value without notice, which could acquire the residual interest free of any obligation to the validating parties

ii) The last two sentences only apply insofar as the validating parties have required a trust assignment.

iii) Even if the trust relationship is in effect, the non validating party would retain all benefits and burdens applicable to the residual interest, subject to the contingent forfeiture of the interest. As a bare trustee the validating parties acquire no benefit in the residual interest, other than the contingent right to a share of that interest in the event of its subsequent forfeiture

Subclause C. In the event a party does not participate in subsequent wells during the period its residual interest is held in trust, the relevant penalty in Clause 9 05 applies. The residual interest is amended accordingly at that time to reflect the application of that subsequent penalty

Subclause D 1) Remember that the residual interest may vary over time, as contemplated in the definition and Subclause 9 06C

ii) Suppose that a document of title requires the drilling of two wells. The first two wells shall be deemed to be title preserving wells, and a party which does not participate in two title preserving or similar wells will not be entitled to a reassignment of its residual interest.

Subclause E. 1) In the event a party does not participate in the required similar wells, it shall forfeit its residual interest to the validating parties. Note that the interest is assigned only to the participants in the relevant title preserving well and by 9 08C is divided among those parties in the proportions in which they assumed the non validating party's share of costs of such well.

This provision could have been structured to allocate that interest among those parties which participated in the title preserving well and any similar wells in the proportions in which they assumed the non-validating party's share of costs in both the title preserving and similar wells

The provision, however, attempts to recognize the value of the first well to future exploration efforts on the lands subject to the relevant document of title. In essence, it assumes that short to medium term exploration plans will be contingent on the results of the first well. If a party assumes additional penalty expenses with respect to that well, it should receive an additional reward in relation to parties which set their exploration strategy after the drilling of that well and the analysis of the data therefrom

B Failure To Participate In A Title Preserving Well

If less than all of the Parties participate in the drilling of a Title Preserving Well each Non-Validating Party with respect thereto shall, in addition to the applicable penalty or penalties described in Clause 9 05 (Penalty For Independent Drilling), execute such trust agreements or assignments respecting the Residual Interest as the Validating Parties may reasonably require to secure the interests which they may acquire pursuant to Subclause E of this Clause 9 06 Insofar as the Validating Parties hold a Non Validating Party's Residual Interest in trust on behalf of such Non-Validating Party, such Validating Parties shall hold such Residual Interest as a bare trustee During the period that such trust is in effect hereunder, such Non Validating Party shall retain the rights and remain responsible for the obligations applicable to its Residual Interest, including, without limiting the generality of the foregoing, voting rights applicable to such Residual Interest in this Operating Procedure Any disposition by a Non Validating Party of its Residual Interest, or any portion thereof, shall be expressly subject to the rights of the Validating Parties pursuant to this Clause 9 06

C Failure To Participate In Subsequent Independent Operations

If a Non-Validating Party does not participate in an Independent Well during the period in which its Residual Interest is held in trust, the Residual Interest shall be reduced by the portion prescribed by the applicable provision of Clause 9 05 (Penalty For Independent Drilling), which portion of such Residual Interest shall thereupon be assigned to the Participants in such Independent Well

D Participation In Similar Well

If a Non-Validating Party participates in the drilling of a Similar Well, such Non Validating Party shall be entitled to a reassignment of its Residual Interest from the Validating Parties If, however, a Document of Title requires the drilling of more than one Title Preserving Well, such obligations shall be deemed to be satisfied in the order in which such wells are drilled, provided that a Non-Validating Party with respect to one or more of such Title Preserving Wells shall be obligated to participate in the drilling of a Similar Well for each Title Preserving Well in which it did not participate in order to have its Residual Interest reassigned to it

E. Failure To Participate In Similar Wells

In the event a Non-Validating Party does not participate in the drilling of any Similar Well(s) necessary for a reassignment of its Residual Interest, such Non Validating Party shall forfeit its Residual Interest to the Validating Parties at the end of that period of the Document of

Subclause F i) An exploration licence issued under legislation in the form of the Canada Petroleum Resources Act ultimately only enables the explorer to retain discovery areas beyond the end of the primary term. In the event a party was a non participant with respect to the original discovery area well and did not participate in at least one follow up (regardless of whether any were, in fact drilled), that party would forfeit its entire interest in the discovery area. Note that the fact that a fixed section block penalty may have initially applied does not affect this result.

ii) Note the requirement that the reversion date pertain to the particular document of title in effect at the time the well had been drilled. The provision is not intended to apply retroactively.

iii) If a party would be required to drill a delineation well at a time when it would not be prudent to do so in order to maintain its interest, it may be mutually attractive to negotiate an arrangement whereby that party would pay an additional share of costs respecting a subsequent well. Otherwise the participants might be required to participate in a well of dubious value, solely to enable the non participant to maintain its interest.

iv) The delineation well would not necessarily be drilled on the discovery area. While a well on the discovery area is necessarily a delineation well, a well drilled outside the discovery area may, in fact, be a delineation well.

Clause 9.07 i) This Clause addresses the question of the applicability of penalty provisions when the forfeiture area includes a different sub area than that on which the well is drilled.

Subclause A provides that in the event the relevant penalty area is not dependent on the determination of the prospect and the operation working interests, a party having a working interest in the section on which the well is drilled is subject to the forfeiture of a portion of its interest in the penalty area, insofar as it has an interest in the penalty area. However, the working interest which it would forfeit would not exceed its interest in the location for the independent well.

To illustrate, assume that the forfeiture for non participation is 100% of the non participant's interest and that interests in the relevant sub areas are as follows:

	Sub Area A (exploratory well location)	Sub Area B
A	10	20
B		10
C G	90	70

If C-G are the participants in this well, A would forfeit its entire 10% interest in the relevant portion of sub area A and a 10% interest in sub-area B, notwithstanding that it had a 20% interest in that sub-area B, on the other hand, would not be subject to any forfeiture, since it did not have an interest in the well location.

If, however, the penalty area were a function of the prospect, Subclause B would ensure that a company is subject to a loss of some portion of its interest across the entire penalty area.

The implications of this mechanism should be considered very carefully if ownership is extremely complex.

ii) The parties would presumably attempt to negotiate an equitable cost sharing arrangement if fixed section penalties were in place and ownership of the prospect were heterogeneous. Should those negotiations be unsuccessful, the proposing party would then have to determine the degree to which it wanted to drill the well.

Title which had included the obligation to drill the Title Preserving Well(s) or at such earlier date as such Non Validating Party so elects

F Failure To Participate In Discovery Area Wells

Notwithstanding any other provision of this Article 9 00, in the event a Party was a Non-Participant with respect to a Discovery Area Well and such Party does not participate in at least one (1) subsequent Delineation Well with respect thereto to evaluate the Potentially Productive Units to which such Discovery Area pertains before the Reversion Date of that particular Document of Title to which such portion of the Agreement Lands was subject at the time such Discovery Area Well was drilled such Party shall forfeit its entire Working Interest in such Discovery Area at the Reversion Date to the Participants in such Discovery Area Well

9 07 Application Of Forfeitures To Other Sub-Areas

A. Where Forfeiture Is Not Based on Prospect

In the event the forfeiture applicable to non-participation with respect to an Independent Well is a determinable number of Sections not based on the determination of the Prospect(s) being evaluated by such well and one or more of such Sections is included in a Sub Area other than the Sub Area which includes the proposed bottom hole location of such well (as determined by the proposed bottom hole coordinates of such well), such forfeiture shall apply to such other Sub Area with respect to a Non Participant, as if such well pertained only to one Sub Area, provided that the Working Interest to be forfeited by such Non Participant in the Sub-Area which does not include the proposed location of such well shall not exceed that to be forfeited by it in the Sub Area which includes such location

B Where Forfeiture Is Based On Prospect

In the event the forfeiture applicable to non-participation with respect to an Independent Well is a variable number of Sections based on the determination of the Prospect(s) being evaluated by such well and one or more of such Sections is included in a Sub-Area other than the Sub-Area which includes the bottom hole location of such well (as determined by the proposed bottom hole coordinates of such well), such forfeiture shall also apply to such other Sub Area Notwithstanding the foregoing sentence, a Party which is determined not to have an Operation Working Interest with respect to such well pursuant to Article 4 00 (Management Committee), paragraph 9 03A(c) (Issuance Of An Independent Operation Notice) or Article 22 00 (Arbitration), as the case may be, shall not be required to forfeit any portion of its Working Interest by virtue of its non participation with respect to such well

Subclause 9 08A This ensures that such provisions as insurance, information, accounting for joint costs and expenses and the management committee apply mutatis mutandis to the independent operation

The proviso at the end of the Subclause addresses the voting procedure applicable to that management committee (i.e., testing program) Given that it may be difficult or impossible to attain the typical 3 party/X% threshold with respect to an independent operation the threshold will generally be a 2 party/X% mechanism with respect to the independent operation This is subject to the qualification that when there are only two participants, the vote will simply be on the basis of participating interests of X%

Subclause 9 08B 1) The provision attempts to balance the requirements of the operator and the non operators where the operator is a non participant with respect to a well and the well utilizes joint property, something which will generally be unlikely with respect to at least east coast operations Basically, the operator would operate that well pursuant to the directions of the participants unless the operator (a) reasonably believed that its instructions would conflict with its duties as operator (b) reasonably determined that the operation could not be conducted with the equipment then available in accordance with the terms of the independent operation notice (i.e., cost and timing) or safely, or (c) determined that it would be inappropriate to operate the well for any other bona fide reason

Although the operator would preferably conduct the operation because of its technical expertise and access to facilities, the operator cannot be required to conduct the operation The operator would not be profiting from that operation Moreover, the operator may wish to devote its technical personnel to another project during the period the operation is proposed to be conducted However, the operator should be given the opportunity to conduct the operation so that it could utilize idle facilities and personnel

Of particular relevance, though, is the case in which the operator is a participant but not the proposing party The operator may not be able to conduct the operation under the timing and cost constraints proposed in the independent operation notice

ii) As a practical matter, a proposing party should discuss operatorship and logistics with the operator prior to the issuance of the independent operation notice Those parties may negotiate an arrangement whereby the operator agrees to operate the well

iii) In the event the operator were a non-participant which operated the well, it would receive one major benefit the acquisition of well information on a current basis This would be particularly relevant if the well were being drilled into a sale This problem would presumably be very negotiated in the particular fact situation if another party had the technical expertise to conduct the operation

Subclause C Suppose A, B, and C hold respective working interests of 50%, 25% and 25% A elects not to participate in an exploratory well, B elects to participate only to the extent of its working interest and C elects to assume A's entire share of costs

As C has assumed A's entire share of costs, the interest to be forfeited by A should obviously accrue solely to C

However, in the absence of the last sentence, the forfeited interest would be divided between B and C in the proportions of their participating interests by virtue of the first sentence, such that B would obtain 25% of the forfeited interest without assuming any portion of the penalty expenses'

9 08 General Provisions Respecting Independent Operations

A. Operating Procedure Provisions To Apply

Subject to the provisions of this Article 9 00, the provisions of this Operating Procedure shall apply mutatis mutandis to an Independent Operation as if it were a Joint Operation, except that the restriction pertaining to the number of Parties prescribed by paragraph 4 04C(a) (Voting Procedure) shall be altered to provide that matters to be determined thereunder shall be determined by the affirmative vote of two (2) or more Participants holding the requisite Participating Interests, provided such restriction on the number of Participants shall be inapplicable if there are not greater than two (2) Participants

B. Party Conducting Independent Operation

- (a) If the Operator is a Participant in an Independent Operation, the Operator shall conduct such Independent Operation, subject to paragraph (b) of this Subclause B
- (b) If the Operator is either a Non Participant or a Participant, but not the Proposing Party with respect to an Independent Well and such well will utilize facilities or equipment held as Joint Property, the Operator shall conduct such Independent Operation pursuant to the directions and instructions of the Participants provided that the Operator may decline to operate such well (i) if it reasonably believes that the directions and instructions received from the Participants conflict with its duties and obligations pursuant to this Operating Procedure, (ii) if the Operator, in its reasonable judgement, believes that such Independent Operation cannot be conducted or cannot be safely conducted in the circumstances then prevailing or with the equipment then available or likely to be available or in accordance with the provisions of the Independent Operation Notice applicable thereto, or (iii) for any other bona fide reason identified to the Participants at the time that the Operator declines to operate such well
- (c) Unless otherwise provided in this Subclause B, the Participants shall appoint a Party to conduct such Independent Operation from amongst the Participants in the same manner as provided in Clause 5 04 (Appointment Of New Operator)

C. Benefits And Burdens To Be Shared

If there is more than one Participant in an Independent Operation such Participants shall share and assume all benefits and burdens relating to such Independent Operation in proportion to their Participating Interests in such Independent Operation, subject to Subclause F of this Clause 9 08 Notwithstanding the foregoing sentence, any Working Interest to be forfeited or any cash amount to be paid by a Non Participant with respect to an Independent

Subclause D 1) In the event the operator owns its own facilities, the operator would presumably insist on a special clause in the agreement to ensure that no party had any right to utilize its facilities

11) The participants would have to negotiate for consumable supplies at the time in the context of joint account requirements

Paragraph E(a) There are many who believe that a non participant with respect to an exploratory well should not receive the data therefrom because the penalty attributable thereto will probably be the forfeiture of that party's entire interest in the exploratory penalty area. The Operating Procedure accommodates this position by including the option to restrict the release of information to independent delineation wells

There are two reasons for the opposing view that a non participant should receive information from all independent wells

Firstly although the non participant did not pay its share of well costs it did contribute its interest for the drilling of the well

Secondly, it is preferable for the parties to use the same data base in the evaluation of joint lands whenever feasible. Otherwise it would be difficult to discuss exploration strategy frankly

It may initially seem more attractive to place the onus on the non participant to request this information. Given that the operator is to be reimbursed its costs of supplying the data, the only cost to the operator associated with this mechanism is inconvenience. Since the general principle is that it is desirable for the parties to have a common data base the provision presumes that the non participants require the information on a current basis

Operation pursuant to this Article 9 00 shall be divided among the Participants in such Independent Operation in the proportions in which such Parties have borne that share of the costs of such Independent Operation otherwise applicable to the Non Participant.

D Use Of Joint Property For Independent Operation

- (a) The Participants shall have the right to utilize facilities or equipment held as Joint Property at their sole cost and risk for the conduct of an Independent Operation, provided that such use is permitted pursuant to the applicable contract with the owner of the equipment and that such use allows priority to be given to Joint Operations (including those which have been approved but have not been conducted)
- (b) The Participants so utilizing facilities or equipment held as Joint Property in the conduct of an Independent Operation shall be responsible for all operating costs with respect to such Joint Property resulting from the conduct of such Independent Operation, including any repairs or maintenance expense directly attributable to and made necessary by such use and the costs of depreciation of such Joint Property during the period of such utilization

E Information

- (a) The Participants in (specify whether * or ** is applicable ____) *any Independent Well **an Independent Well which is a Delineation Well shall provide each Non Participant with respect thereto with the information described in Clause 6 17 (Submission Of Information To Parties) on a current basis, as if such well were drilled for the Joint Account, unless and to the extent that a Non Participant advises the Participants that it does not wish to obtain a copy of such information Each Non Participant which receives such information shall reimburse the Participants for the cost of reproducing and transmitting such information to it.
- (b) Notwithstanding paragraph (a) of this Subclause E, such information shall not be provided to such Non-Participants on a current basis without the unanimous consent of such Participants if, at the time such well is commenced, any lands within ____ kilometres of the proposed bottom hole location of such well (as determined by the proposed bottom hole coordinates of such well) being evaluated by such well are then offered by the relevant governmental authority for disposition by public sale (or the Participants have requested that such lands be so offered for disposition) In such event such information shall be made available to such Non-Participants within thirty (30) days after such disposition

Paragraph E(c) Note that for the purpose of 15 03 only the participants retain proprietary rights in well information such that the consent of the non participant is not required to disclose information for consideration thereunder

Subclause F Note that the operator remains responsible for its gross negligence on the same basis as when it operates a joint operation. It is likely, though, that operators would attempt to negotiate out of this obligation when the operation is proposed

Subclause G- 1) The parties should attempt to agree on the allocations at the time and document that allocation. Such allocations can be very controversial when an audit is ultimately conducted in the absence of such agreement. The inventory of consumables on hand, such as fuel, mud additives and cement, will be of significant value in minimizing the likelihood of subsequent disputes

ii) The allocation mechanism provides the parties with a great deal of flexibility in making an equitable allocation of costs. However, to the extent that the parties cannot agree on the allocation of costs, the provision includes several guiding principles and the right to refer the matter to arbitration

Although complex, the principles are included to ensure that there is an equitable allocation of tangible costs respecting such items as the wellhead and intangible costs, where the expenditures relate simply to a well. Of particular concern would be the allocation of mobilization and demobilization costs. In the absence of paragraph(c), a party may attempt to allocate those costs solely to the shallow interval because of the fact that the costs pertain to a well, not the depth of the well

- (c) Subject to the requirements of disclosure in this Subclause E and the provisions of Article 15 00 (Confidential Information), all information described in this Subclause E shall be the sole property of the Participants in such Independent Well and the Non Participants with respect thereto shall have no rights with respect to such information.

F Indemnification And Liability

The Participants in an Independent Operation shall

- (a) be liable to the Non Participants with respect thereto for any losses, costs damages and expenses whatsoever (whether contractual or tortious) which those Non Participants may suffer, sustain, pay or incur, and
- (b) in addition, indemnify and hold harmless those Non Participants and their directors, officers, servants, agents and employees against all actions, causes of action, proceedings, claims, demands, losses, costs, damages and expenses whatsoever which may be brought against or suffered by those Non Participants, their Affiliates, directors, officers, servants agents and employees or which they may sustain, pay or incur,

insofar as they are a direct result of or directly attributable to any act or omission (whether negligent or otherwise) of those Participants or their directors, Affiliates, officers servants agents, employees, independent contractors, licensees or invitees with respect to such Independent Operation, all subject to paragraph 7 01(b) (Limit Of Legal Responsibility) when a Non-Participant is the Operator for such Independent Operation

**G Allocation Of Well Costs
When Participation In Well Differs**

If the participation in a well drilled pursuant to this Operating Procedure differs because of the provisions of Subclause 6 01G (Approval Mechanism For Supplementary A.F.E s Drilling), Subclause 9 03G (Separate Election Where Well Status Divided) or Subclause 9 05C (Penalty For Independent Deepening), the Operator shall promptly conduct an inventory of all consumable supplies and materials respecting such well. The affected Parties shall thereupon meet forthwith to attempt to agree on the allocation of Well Costs to the respective portions of such well. In making such determination, the Parties shall allocate the Well Costs which are identifiable with the respective portions of the well in which the participation so differs to the respective portion with respect to which costs are so identifiable, and any other Well Costs shall be allocated in such equitable manner as such Parties may agree. Subject to the foregoing sentence, the following principles shall apply to the allocation of the balance of the Well Costs of such well to the respective portions of such well

Subclause H. The provision distinguishes between the initial testing program and an extended testing program following the rig release of the well. A non-participant has no right to share in any proceeds arising out of the initial testing program.

It may, however, have a right to participate in a subsequent extended testing program if the applicable forfeiture had been less than 100% of its interest. If an independent well were tested at a later date for the joint account pursuant to the voting procedure, the fact that a party had been a non participant when the well was drilled would be of no relevance to the disposition of petroleum substances applicable to the subsequent testing program.

Since the document does not address independent testing, the provision does not extend to the scenario in which an extended testing program is not conducted for the joint account.

Clause 10.01 1) Notwithstanding the wording of this Clause, the provision arguably applies to the relationship of the parties as regards third parties, rather than to the actual relationship of the co-venturers.

Consider this provision in the context of Clause 8.05 respecting the reimbursement of the operator. In the event a party defaulted in its obligation to pay its working interest share of costs incurred for the joint account, that provision ensures that the burden is shared by the non-defaulting parties until (and to the extent that) the operator can utilize its remedies to recover the unpaid amount. Otherwise, the operator would always have to bear that burden alone.

11) The provision may not be effective against third party litigants anyway. A court is not obligated by the provisions of the contract. Unless the court apportions legal responsibility among defendants, a successful plaintiff can enforce its judgment jointly against those defendants which were held responsible for its loss.

- (a) the costs of the logging and Abandonment of such well shall be allocated to the respective portions of such well in the ratio that the meterage of a portion of such well bears to the total depth of such well,
- (b) the costs of the production casing of such well, if any, shall, to the extent that such casing serves the respective portions of such well, be allocated to the respective portions of such well in the ratio that the meterage of such casing serving a portion of such well bears to the total meterage of such casing contained in such well, and
- (c) the tangible costs of equipment serving the respective portions of the well and the intangible costs of drilling such respective portions of such well shall, subject to paragraph (b) of this Subclause G be allocated to such respective portions in the ratio that the number of days to drill and to test (if applicable) such portion bears to the total number of days to drill and to test (if applicable) such well

To the extent that such Parties are unable to agree on such allocation of Well Costs, a Party shall have the right to refer such matter to arbitration pursuant to Article 22 00 (Arbitration) An allocation made pursuant to this Subclause shall be supported by an approved Supplementary A.F.E. and a revised A.F.E., as required

H Sale Of Petroleum Substances

The Participants in an Independent Well may dispose of any Petroleum Substances recovered during the testing of such well prior to its Rig Release for their own account

10 00 RELATIONSHIP OF PARTIES

10 01 Tenants In Common

The rights, duties, obligations and liabilities of the Parties hereunder shall be separate and not joint or collective, nor joint and several, it being the Parties' express intention that their interests in the Joint Property shall be held as tenants in common, subject to the modification of the incidents thereof that are provided in this Operating Procedure Nothing contained in this Operating Procedure shall be construed as creating a partnership, joint venture or association of any similar kind or as imposing upon any Party any partnership duty, obligations or liability to any other Party under the laws of Canada

Subclause 11 01B 1) This ensures that a party is precluded from attempting to avoid liability by surrendering during an emergency, such as a blowout which is anticipated to take several months to bring under control

11) A surrendering party is not released from its share of obligations pertaining to deposits and promissory notes, as noted in Subclause 11 03B The possible forfeiture of such amounts, therefore does not preclude the issuance of the surrender notice

11 00 SURRENDER OF AGREEMENT LANDS

11 01 Surrender Notice

A. Issuance Of Surrender Notice

Not later than sixty (60) days prior to the next ensuing anniversary date or other date on which any obligation must be performed with respect to a Document of Title (hereinafter referred to in this Article 11 00 as "the Obligation Date), a Party may give notice (hereinafter referred to in this Article 11 00 as a "Surrender Notice") to the other Parties proposing that all or part of the Agreement Lands subject to such Document of Title be surrendered to the grantor of such Document of Title, provided that such Agreement Lands must be of such dimensions that such grantor would be obligated to accept a surrender thereof pursuant to the Regulations or the provisions of such Document of Title

B Limitation On Issuance Of Surrender Notice

Notwithstanding the provisions of Subclause A of this Clause 11 01 a Party may not, without the approval of the other Parties give a Surrender Notice pertaining to any portion of the Agreement Lands during any emergency respecting such portion of the Agreement Lands or while an obligation contained in a Document of Title to which such Agreement Lands are subject remains unsatisfied, except where such obligation can be avoided without penalty in addition to that for which a Party would retain responsibility pursuant to Subclause 11 03B (Surrendering Parties Released From Obligations), by a surrender of such Agreement Lands to the grantor thereof.

11 02 Reply To Surrender Notice

A. Parties To Elect Whether To Join In Surrender

Each Party receiving a Surrender Notice shall, not later than thirty (30) days prior to the Obligation Date, give a notice (hereinafter referred to in this Article 11 00 as a "Reply Notice) to the other Parties in which it elects whether

(a) it will join in such surrender,

(b) it is prepared to retain its Working Interest with respect to all or any portion of the Agreement Lands to which such Surrender Notice pertains without accepting an assignment of any additional Working Interest therein,

Subclause 11 02C. i) This is only relevant if no party elects (or is deemed to have elected) to acquire its proportionate share of available interests pursuant to paragraph 11 02A(d) If one party elects to acquire its proportionate share of available interests, it has made an election to acquire whatever interest is available

ii) Although the parties may agree to extend this 5 day period, the problem must be resolved at some point. Since a partial interest cannot be surrendered to the Crown, the lands will either be retained by one or more parties or be surrendered

- (c) it is prepared to retain its Working Interest and accept an assignment of the Working Interests of the Party which issued the Surrender Notice and those Parties which elect to join in such surrender with respect to all or any portion of the Agreement Lands to which such Surrender Notice pertains, with a limitation as to the maximum additional Working Interest such Party is prepared to accept, or
- (d) it is prepared to retain its Working Interest and accept an assignment of the Working Interests of the Party which issued the Surrender Notice and those Parties which elect to join in such surrender with respect to all or any portion of the Agreement Lands to which such Surrender Notice pertains

Failure by a Party to reply to a Surrender Notice within such thirty (30) day period shall be deemed to have been an election by such Party to accept an assignment of all Working Interests proposed for surrender in that portion of the Agreement Lands to which such Surrender Notice pertains in accordance with paragraph (d) of this Subclause A.

B Working Interests To Be Shared Proportionately

If more than one Party elects to accept an assignment of the Working Interests to be surrendered pursuant to Subclause A of this Clause 11 02 in all or any portion of the Agreement Lands to which the Surrender Notice pertains, the surrendered Working Interests in the relevant portion of such Agreement Lands shall be acquired by each Party making such election in the proportion that its Working Interest bears to the total Working Interests of the Parties accepting such assignment, subject to any limitation described in Subclause A. The Operator shall advise the Parties in a timely manner of the resultant allocations of the Working Interests to be surrendered.

C Unassumed Interest

If some (but less than all) of the Parties elect not to surrender their Working Interests in a portion of the Agreement Lands proposed for surrender and a portion of the Working Interests proposed for surrender in such portion remains unassumed hereunder, such non surrendering Parties shall, within five (5) days of such allocation, determine whether and how they will assume such available Working Interest. The Operator shall promptly advise the other Parties of such determination

Subclause 11 03A. If a well is required to be abandoned prior to the termination of the document of title being surrendered, a surrendering party will be required to pay its share of the abandonment costs

Note that by Clause 1 06 this may require an assignee to pay for the abandonment costs of a well which had been drilled by its predecessor in interest. Potential assignees should address this item when they negotiate the terms of the acquisition of their interest.

Subclause 11 03B i) Suppose A, B and C acquire an exploration licence for a work bonus bid of \$4 MM, such that they are required to post a deposit of \$1 MM. If A surrendered its interest at the end of the second year, A should not be able to recover its share of the deposit at that time. However in the event that B & C subsequently conducted sufficient work to recover the deposit, A's share of the deposit would be returned to it pursuant to Subclause 6 06B

A should not be permitted to escape from its share of a deposit which had been submitted to governmental authorities. However, B & C should not be able to profit by A's decision to surrender by retaining A's share of any deposit.

ii) Remember that the surrendering party would still retain the obligation to maintain information confidential pursuant to Clause 15 04

Clause 11 04 Assume that D, E & F acquire an exploration licence and that D surrenders its interest in half of the exploration licence. E and F would have no obligation to drill a well by the end of the first period to maintain the right to continue the exploration licence for a second period. However, E and F would retain the responsibility to pay land maintenance costs, such as rentals, to maintain the exploration licence in good standing, unless they subsequently surrendered the interest in the manner prescribed by the regulations

11 03 Assignment Of Interest Surrendered

A. Assignment

Effective at 11.59 p.m. on the day prior to the Obligation Date, the Parties which elected to surrender an interest in a portion of the Agreement Lands (hereinafter referred to in this Article 11 00 as "the Surrendering Parties") shall forthwith assign to the Parties acquiring a Working Interest in such portion of the Agreement Lands (hereinafter referred to in this Article 11 00 as "the Acquiring Parties") all of their Working Interests in such Agreement Lands and any Joint Property thereon. Within thirty (30) days following the receipt of such assignment, the Acquiring Parties shall pay to each Surrendering Party such Surrendering Party's Working Interest share of the estimated salvage value of the material and equipment on the Agreement Lands so assigned, less such Surrendering Party's Working Interest share of the estimated costs of salvaging such material and equipment and Abandoning any well on the Agreement Lands so assigned which is required to be Abandoned prior to the termination of the relevant Document of Title by the Regulations. This amount shall be calculated immediately prior to such assignment in accordance with the Accounting Procedure. In the event the foregoing deductions are greater than such estimated salvage value, each Surrendering Party shall pay its Working Interest share of such difference to the Acquiring Parties within thirty (30) days of such assignment.

B. Surrendering Parties Released From Obligations

Upon the assignment described in Subclause A of this Clause 11 03, a Surrendering Party shall be released from all obligations thereafter accruing with respect to the portion of the Agreement Lands so surrendered, other than any obligation which had accrued with respect to such portion of the Agreement Lands prior to such surrender, including without limiting the generality of the foregoing, that portion of any bond, deposit, promissory note or other form of financial responsibility or security which had been required to be submitted to governmental authorities with respect to such portion of the Agreement Lands pursuant to the Regulations or the Documents of Title. However, such obligation shall not extend to any outstanding obligation to Abandon any well which had been drilled on such portion of the Agreement Lands prior to such surrender if such Surrendering Party had paid its Working Interest share of the estimated cost of Abandoning such well pursuant to Subclause A of this Clause 11 03.

11 04 Acquiring Parties To Meet Obligations

If failure by the Acquiring Parties to satisfy any obligation relating to that portion of the Agreement Lands which was included in the assignment described in Clause 11 03 (Assignment Of Interest Surrendered) would prejudice the Working Interests of the Surrendering Parties in any

Clause 11 07 This mechanism would only be applicable in situations in which a document of title includes more than one sub area

Assume, for example, that A, B and C hold two grid areas of an exploration licence and that A, B, C, D and E hold the remainder of that exploration licence. If A, B and C intended to surrender their interest in those two grids to the Crown in accordance with the preceding Clauses of the Article the Clause simply provides that they would offer that interest to D and E

other portion of the Agreement Lands, the Acquiring Parties shall be deemed to have covenanted to satisfy such obligation in accepting such assignment and the Acquiring Parties shall indemnify the Surrendering Parties for any loss suffered by the Surrendering Parties, or any of them as a direct result of the failure of the Acquiring Parties to satisfy such obligation. However, such covenant shall not require the Acquiring Parties to conduct any drilling, geophysical or geological operation or any study on or relating to such surrendered portion of the Agreement Lands in order to satisfy an outstanding work obligation contained in the Document of Title to which such Agreement Lands are subject.

11 05 All Parties Agree To Surrender

Subject to Clause 11 07 (Surrender Of Sub Area), if all of the Parties elect to join in a surrender pursuant to this Article 11 00, the Operator shall forthwith proceed to salvage for the Joint Account all salvageable material and equipment upon that portion of the Agreement Lands to be surrendered. The Parties shall promptly execute and deliver to the Operator all documents necessary to effect such surrender, which documentation shall be prepared by the Operator. The Operator shall thereupon effect such surrender with the grantor of the Documents of Title to which such surrender pertains.

11 06 Failure To Surrender As Agreed

Subject to Clause 11 07 (Surrender Of Sub Area), if all of the Parties have concurred in a proposed surrender pursuant to this Article 11 00 that portion of the Agreement Lands to which the Surrender Notice pertains and which the Parties have elected to surrender shall be held for the Joint Account until such surrender has been irrevocably effected, including the termination of any right to reinstate any Document of Title (insofar as such portion of the Agreement Lands is subject to such Document of Title), so that all of the Parties shall receive or have the right to participate in any benefits which may accrue during the period before such surrender is irrevocably effected. However, if any Party to which any interest is transferred for the purpose of effecting such surrender does not duly proceed with such surrender and thereby causes any additional obligation to arise with respect to that portion of the Agreement Lands to be so surrendered, such Party shall be solely responsible for satisfying such obligation and shall indemnify the other Parties for any loss which they may suffer as a direct result thereof.

11 07 Surrender Of Sub Area

A. Notice Of Surrender

Notwithstanding the foregoing provisions of this Article 11 00, if the lands to which the Surrender Notice pertains are subject to a Document of Title which includes a Sub Area and all of the Parties holding Working Interests in such Sub-Area wish to surrender all or a portion

This mechanism does not materially impact on a company's attempts to farm out to sell or to assign otherwise its interest in those lands for any consideration. If a party is actively engaged in such discussions 20 days prior to the obligation date it probably would not have given a surrender notice anyway.

of such lands pursuant to the preceeding Clauses of this Article 11 00 the Operator (on behalf of such Parties) shall give notice (hereinafter referred to in this Article 11 00 as a Sub Area Surrender Notice") to the other Related Parties advising such Related Parties of the proposed surrender of such lands not later than twenty (20) days prior to the Obligation Date respecting such lands

B Reply To Sub-Area Surrender Notice

Each Related Party receiving a Sub-Area Surrender Notice may give a notice to the Operator and the other Related Parties in which it elects to accept an assignment of all or a portion of such lands not later than ten (10) days prior to the Obligation Date respecting the lands to which such Sub-Area Surrender Notice pertains. If more than one Related Party elects to accept an assignment of the Working Interest in the lands to which the Sub Area Surrender Notice pertains the surrendered Working Interest in the relevant portion of such lands shall be acquired by each Related Party making such election in the proportion that its Average Document Interest bears to the total Average Document Interests of the Related Parties which elect to accept such assignment.

C Application Of Clauses 11 03 And 11 04

Clauses 11 03 (Assignment Of Interest Surrendered) and 11 04 (Acquiring Parties To Meet Obligations) shall apply mutatis mutandis to the surrender of the lands to which the Sub Area Surrender Notice pertains

12 00 LITIGATION

12 01 Conduct Of Litigation

Litigation in connection with the Documents of Title, the Agreement Lands or any Joint Operation shall be conducted for the Joint Account on behalf of the Parties pursuant to the direction of the Management Committee, unless and to the extent that such litigation is among the Parties. Each Party shall notify the other Parties of any process served upon it or of any process it intends to serve in any action respecting the Documents of Title, the Agreement Lands or any Joint Operation. Notwithstanding the foregoing portion of this Clause 12.01, nothing contained in this Clause 12.01 shall preclude a Party from also acting on its own behalf (and at its own expense) if, in its opinion, it considers such action advisable or necessary to protect its particular interest hereunder. However, a Party so acting on its own behalf shall not pursue a course of action contrary to the course of action then being taken for the Joint Account with respect to such litigation

Clause 13 01 1) A force majeure suspends the performance of the affected obligations not only for the period that it prevents the performance of the obligation, but also for such additional time as the party may reasonably require to commence to fulfil those obligations. The party cannot practically be expected to begin fulfilling its obligations the moment the force majeure is remedied. This is apparent when one considers that equipment and personnel may have to be mobilized on short notice.

11) In addition to the standard reference to the force majeure not suspending the obligation to pay money, note that it also does not suspend the obligation to submit deposits or other forms of financial security required under the Operating Procedure.

13 00 FORCE MAJEURE**13 01 Suspension Of Obligations Due To Force Majeure**

If any Party is prevented by Force Majeure from fulfilling any obligation hereunder, the obligations of such Party, insofar only as its obligations are affected by such Force Majeure, shall be suspended while such Force Majeure continues to prevent the performance of such obligation and for such time thereafter as such Party may reasonably require to commence diligently to fulfill such obligation, provided that a Force Majeure shall not suspend any obligation for either the payment of money or the submission of any form of financial responsibility or security required hereunder. Any Party prevented from fulfilling any obligation by Force Majeure shall promptly give the other Parties notice of such obligation and such Force Majeure including reasonably full particulars in respect thereof.

13 02 Obligation To Remedy

The Party claiming suspension of any obligation hereunder shall promptly remedy the cause and effect of the Force Majeure described in the notice referred to in Clause 13 01 (Suspension Of Obligations Due To Force Majeure), insofar as it is reasonably able so to do. However the terms of settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of such Party and such Party shall not be required to accede to the demands of its opponents in any strike lockout or industrial disturbance solely to remedy promptly the Force Majeure thereby constituted.

14 00 UNITED STATES TAXES**14 01 No U S Tax Partnership**

If, for purposes of the United States Internal Revenue Code of 1986, as amended (hereinafter referred to in this Clause 14 01 as "the Code") this Operating Procedure or the relationship established thereby constitutes a partnership, as defined in Section 761(a) of the Code, each of the Parties which are entitled under such Section to elect, hereby elects to have such partnership excluded from the application of Subchapter K of Chapter I of Subtitle A of the Code, or such portion thereof as the Secretary of the Treasury of the United States or his delegate shall permit by election to be excluded therefrom. The Operator is authorized to execute such election on behalf of those Parties which are entitled to make such election and to file such election with the proper United States government office or agency. The Operator is further authorized and directed to execute and file such additional and further evidence of such election as may be required, all at the expense solely of those Parties subject to the Code. If, however the Operator is not subject to the Code with respect to the Agreement Lands the obligations of the Operator under this Clause 14 01 shall be fulfilled by the Party which is subject to the Code with respect to the

Subclause 15 01A 1) The inclusion of a provision whereby a party may use information for its own benefit is included to eliminate any possible argument of constructive trust in the event that a party uses joint information to acquire adjacent lands for its own account when there is no express area of mutual interest obligation. Although there would only be a slight chance that the doctrine of constructive trust would be imposed in such circumstances when the agreement is among knowledgeable parties, the reference is relevant insofar as one or more of the parties has little expertise such as a party which is a pension fund.

11) Where a well is being drilled to evaluate lands which have been offered for sale, the parties will presumably attempt to keep the data from the well very closely held. The provision enables the management committee to restrict the disclosure of information from that well.

Subclause 15 01B 1) The references to securities laws consultants bankers proposed transferees and scout check merely reflect the fact that information is released to these persons in practice

11) Paragraph 4 05(gg) provides that the management committee may determine the form of the confidentiality covenant required from third persons prior to the disclosure of information to them pursuant to this Subclause. As long as the prescribed form is used, the approval of the individual disclosure hereunder is not required.

Agreement Lands and which, among those Parties so subject to the Code holds the greatest Average Interest.

15 00 CONFIDENTIAL INFORMATION

15 01 Confidentiality Requirement

A. Information Obtained from Operations

Each Party entitled to information obtained in the course of or as a result of operations conducted upon or with respect to the Agreement Lands may use such information for its sole benefit. However, subject to Clause 15 03 (Disclosure Of Information For Consideration), the Parties shall keep confidential from Third Persons all such information, except information which the Parties have expressly agreed among themselves to release or information which is available to the general public pursuant to the Regulations. The Parties shall take such measures in connection with operations and internal security as are appropriate in the circumstances or such additional special measures as may be directed by the Management Committee with respect to any particular operation conducted hereunder.

B. Permitted Disclosure Of Information

Notwithstanding the provisions of Subclause A of this Clause 15 01, but subject to the direction of the Management Committee to restrict the permitted disclosure of information obtained from an operation conducted hereunder, a Party may disclose such information

- (a) when and to the extent required by the Regulations or securities laws applicable to such Party, provided such Party shall invoke any confidentiality protection permitted by such Regulations or laws,
- (b) to an Affiliate, provided that such Party shall be deemed to have required such Affiliate to maintain the confidential status of such disclosed information and that such Affiliate shall be deemed to have accepted such obligation,
- (c) to any Third Person to which it has made, or proposes to make, a Disposition (as defined in Clause 20 01 Definitions) insofar as it is with respect to the portion of the Agreement Lands to which such Disposition relates, provided that a binding covenant in the form approved by the Management Committee is obtained from such Third Person prior to such disclosure, which provides that such Third Person shall maintain the confidential status of such disclosed information,

- (d) to the technical, financial or other professional consultants of such Party which require such information to provide their services to such Party or to a bank or other financial institution from which such Party is attempting to obtain financing provided that a binding covenant in the form approved by the Management Committee is obtained from such consultant or financier, as the case may be, prior to such disclosure, which provides *inter alia*, that none of such information shall be disclosed to any other Third Person or used for any purposes other than advising such Party or providing financing to such Party
- (e) to a Third Person pursuant to Clause 15 03 (Disclosure Of Information For Consideration), provided that a binding covenant in the form approved by the Management Committee is obtained from such Third Person prior to such disclosure, which provides that such Third Person shall maintain the confidential status of such disclosed information, and
- (f) with the prior written approval of the other Parties and as and when required to any recognized association within the petroleum industry of which such Party is a member provided such association engages in the exchange of factual information relating to the type of operations conducted pursuant to this Operating Procedure

but any information so disclosed shall continue to be treated as confidential by the Parties until it becomes available to the general public pursuant to the Regulations or with the unanimous written consent of the Parties having an interest in the same

C Patentable Information Subject To Confidentiality Requirement

The Parties recognize that a Party or an Affiliate of a Party may hold patents (or may be in the process of acquiring the same) with respect to certain processes, procedures or equipment (hereinafter referred to in this Article 15 00 as "Patentable Information") and that such Party may disclose Patentable Information for the benefit of operations conducted pursuant to this Operating Procedure. Notwithstanding the provisions of Subclause B of this Clause 15 01 the Parties shall keep confidential from Third Persons all Patentable Information used or disclosed hereunder, and they shall not use the same except in the furtherance of work conducted pursuant to this Operating Procedure, provided, however that the confidentiality obligation with respect thereto shall not apply to any Patentable Information which a Party can demonstrate to have been

- (a) information which was in the public domain at the time of such disclosure
- (b) information which entered the public domain after such disclosure except where such entry was the result of a breach of the provisions of this Article 15 00

Clause 15 02. i) The four most probable instances in which a press release would be issued are during an emergency, following negotiations with governmental authorities, the release of a summary of well results and the case in which an individual company proposes to advise investors of its participation in a project.

The first three will usually be sufficiently sensitive in nature that the operator should be precluded from issuing a press release without consultation with the management committee, unless such consultation is not feasible in the particular circumstances. However, it is important to recall that the normal management committee process can be streamlined in emergencies and through the utilization of mail ballots.

The most practical reason for the inclusion of the provision is to exercise some control over the press releases issued by individual parties to attract the attention of investors. When the consortium is attempting to negotiate fiscal items with governmental authorities it does not want to see an individual company promoting its stock on the basis of a very optimistic assessment of the potential of the project.

However, it would be unreasonable to preclude this type of communication without grounds, as would be the case if only the operator could issue a press release.

ii) A party cannot use a press release to release information which it would be precluded from releasing pursuant to Clause 15 01 without obtaining the unanimous consent of the management committee. Otherwise, it could do indirectly what it could not do directly.

Clause 15 03 Note that participants in an independent operation maintain all proprietary rights to that information, notwithstanding that a non-participant may have been supplied with that information. (See Subclause 9 08E)

Clause 15 04 A party which surrenders or forfeits its entire interest is not relieved of its obligations to maintain information confidential until it is in the public domain.

- (c) information which prior to such disclosure, was already in the possession of the Party to which it was disclosed and which was not acquired, directly or indirectly, from another Party under an obligation of confidence or
- (d) information which, subsequent to disclosure hereunder, was obtained from a Third Person which was lawfully in possession of such information and which was not under a contractual or fiduciary obligation with respect to such information

15 02 Press Releases

Without limiting the generality of Clause 15 01 (Confidentiality Requirement), no Party may issue a press release relating to the Agreement Lands or operations conducted pursuant to this Operating Procedure without the prior approval of the Management Committee provided that such limitation shall not prevent the Operator from issuing a press release respecting an emergency. In no event however, shall a Party disclose in a press release information which it is required to maintain confidential pursuant to Clause 15 01 without the unanimous consent of the Management Committee. For the purposes of this Clause 15 02, a press release shall include any release of information for dissemination to the public by any means.

15 03 Disclosure Of Information For Consideration

Notwithstanding the foregoing provisions of this Article 15 00, a Party which proposes to disclose information obtained hereunder for cash in exchange for other information or for other consideration shall notify each other Party having a proprietary interest in such information of the details of such proposed transaction. Within fifteen (15) days following receipt of such notice, each such Party shall, by notice, advise the Party which proposes to make such disclosure whether it approves of such disclosure on the terms specified in such notice, provided that failure of a Party to respond within such period shall be deemed to be the approval of such Party to the disclosure of such information on such terms. Unless the Party which proposes to disclose such information obtains such approvals from all of such other Parties the proposed disclosure of such information shall be prohibited. In the event such approvals are obtained, the consideration to be received for such disclosure shall be shared by the Parties in the proportions of their proprietary interests in such information.

15 04 Confidentiality Requirement To Continue

Notwithstanding the foregoing provisions of this Article 15 00, any Party which otherwise ceases to be bound by the provisions of this Operating Procedure shall nevertheless remain bound by the provisions of this Article 15 00 with respect to information obtained in the course of or as a result of operations conducted upon or with respect to the Agreement Lands or with respect to Patentable Information, as the case may be, until such information is in the public domain.

Clause 16 01 This is only a general statement Most patentable processes would be created with respect to development activities This matter would be addressed in great detail in the development agreement

Clause 17 01 Note the reference to actual or anticipated breaches A prudent party would try to obtain a waiver before the breach not after the fact

Clause 17 02 The agreement will likely be finalized after the effective date The provision recognizes the practical fact that the operator likely would have already breached many of the minor procedural provisions prior to the execution of the document

The second sentence requires the operator to comply with its substantive obligations at all times and those of its procedural obligations which can still be satisfied as of the actual execution of the document

Clause 18 01 1) This provision is unfortunately longer than the conventional notice provision To a large degree, this is attributable to the inclusion of a telephone notice

ii) Paragraph (a) in effect provides that a notice may be personally served on a party during its normal business hours on any normal working day Should a party be closed on a particular day by its own choice (i e, a third Friday off), the party will still be deemed to have received the notice on that day, assuming there is a representative of the party to receive the notice

Otherwise, the parties could have different response dates

A party issuing an important notice should consider the work schedules of other parties when serving the notice

16 00 PATENTS

16 01 Patentable Processes Held As Joint Property

Any patentable processes, procedures or equipment which arise out of any agreement entered into for the Joint Account respecting the development of equipment or methods required in Joint Operations shall be Joint Property

17 00 WAIVER

17 01 Waiver Must Be In Writing

No waiver by any Party of any breach (whether actual or anticipated) of any of the covenants provisos conditions, restrictions or stipulations herein contained shall take effect or be binding upon such Party unless the same is expressed in writing under the authority of such Party Any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other or future breach.

17 02 Deemed Waiver With Respect To Certain Procedural Matters

Notwithstanding any other provision contained in this Operating Procedure, the Operator shall be deemed to have satisfied its obligations with respect to any procedural matter which was to be performed or initiated by the Operator prior to the execution of the Agreement However, this Clause 17 02 shall not operate to relieve the Operator of its obligations of a procedural nature, insofar as it is still possible for the Operator to satisfy such procedural obligations as of the execution of the Agreement, or of its obligations of a substantive nature in any event.

18 00 NOTICES

18 01 Service Of Notices

Except as otherwise provided in this Operating Procedure, all notices, reports, information, data and other communications required or permitted hereunder shall be in writing Any notice required or permitted to be given hereunder by one Party to the other Parties shall be deemed to be properly served if served in any of the following modes

- (a) Personally, by delivering the notice to the Party upon which such notice is to be served at such Party's address for service A notice served in this manner shall be deemed to have been received by such Party on the date upon which such notice is actually delivered, provided such delivery is during such Party's normal business hours on any day other than a Saturday, Sunday provincial statutory holiday in the Province of Alberta or federal statutory holiday in Canada

iii) Paragraph (b) does not require the addressee to acknowledge receipt for that notice to be effective. It is sufficient if the party forwarding the notice can demonstrate that it was sent. The party serving the notice should not be required to assume the risk that the addressee's personnel do not handle the notice properly.

Subparagraph 18.01(d)(ii) The most practical example pertains to a proposed testing program or abandonment outside normal business hours.

and, if such delivery is not during such Party's normal business hours such notice shall be deemed to have been received by such Party at the commencement of the first business day of such Party next following the date upon which such notice is actually delivered.

- (b) By telecopier or telex directed to the Party upon which such notice is to be served at such Party's address for service. A notice so served shall be deemed to have been received by such Party when actually received by it if received during such Party's normal business hours on any day other than a Saturday, Sunday, provincial statutory holiday in the Province of Alberta or federal statutory holiday in Canada or at the commencement of the first business day of such Party next following the date of such transmission if such notice is not received during such normal business hours.
- (c) By first class double registered mail or unregistered first class mail, postage paid, directed to the Party upon which such notice is to be served at such Party's address for service. A notice served in this manner shall be deemed to have been received by such Party on the day it is actually received if sent by double registered mail or on the fifth day (excluding Saturdays, Sundays, provincial statutory holidays in the Province of Alberta or federal statutory holidays in Canada) next following the mailing thereof if sent by unregistered first class mail. However if postal service is interrupted or operating with unusual or imminent delay, notice shall not be served by such means during such interruption or period of delay.
- (d) By telephone if a Party in its reasonable judgment determines that service of notice in accordance with paragraphs (a), (b) or (c) of this Clause 18.01 would not be sufficiently expeditious in a particular instance. However, such notice shall only be considered a valid notice and be deemed to have been received by the receiving Party at the conclusion of such conversation, if
 - i) such telephone conversation is with an authorized representative of the Party upon which such notice is to be served, and for these purposes an authorized representative of a Party shall be that Party's representative on the Management Committee (or its alternate if its representative is unavailable) or any other person specifically authorized by such Party to accept a telephone notice hereunder,
 - ii) such telephone conversation takes place on a business day, in a call to such authorized representative at the office of such Party, unless such limitation is waived by such Party or such authorized representative is officially on duty for the purposes of this Operating Procedure at the time of such conversation, and
 - iii) such telephone conversation and notice are confirmed by telecopier, telex or notice personally delivered by the Party giving such notice, provided such confirmation is received

Clause 18 02 The matters to which this provision would be applicable are generally well evaluations emergencies, a proposed deepening with a rig on location and, on occasion, the consideration of Supplementary A.F E 's

Article 20 00 This Article does not address the COR question, as that issue is one which will have to be negotiated separately for each agreement

by the addressee thereof no later than the first business day of the addressee next following the date of transmission or delivery, as the case may be

18 02 Forty-Eight Hour Notices

Notwithstanding any other provision of this Article 18 00, notice shall be given by telephone, telecopier, telex or personal delivery in accordance with the foregoing provisions of this Article 18 00 where this Operating Procedure provides for a notice period of forty-eight (48) hours or less

18 03 Address For Service

A. Addresses

The address for service of each of the Parties shall be as listed in Schedule E

B Change Of Address

A Party may change its address for service by notice served on the other Parties, and such changed address for service shall thereafter be effective for all purposes of this Operating Procedure

19 00 NO PARTITION

19 01 Waiver Of Partition Or Sale

No Party shall have the right to apply for any partition of the Agreement Lands or sale thereof in lieu of partition. Insofar as such right may otherwise exist at law or in equity, each Party agrees not to exercise such right.

20 00 DISPOSITION OF INTERESTS

20 01 Definitions

The following definitions shall apply in this Article 20 00, unless the context otherwise requires

- A. "Disposition" means a sale, assignment, transfer, lease, sublease, farmout or other disposition of any portion of a Party's Working Interest, other than an assignment made by way of security for a Party's indebtedness

Clause 20 02 Remember that Article 3 00 applies to ensure that this provision only applies among the parties having an interest in the relevant lands

Subclause 20 02B This provision is analogous to Subclause 2401A of the conventional CAPL Operating Procedure, with two major qualifications

Firstly the 30 day deemed consent mechanism ensures that the disposition will be reviewed in a timely manner

Secondly, the provision states that it is reasonable for a party to withhold its consent if it has a reasonable concern respecting the financial capability of the proposed assignee to fulfil obligations arising out of the Operating Procedure, including any development

Subclause 20 02C 1) This provision is analogous to Subclause 2401B of the conventional CAPL Operating Procedure, subject to some modifications with respect to the arbitration process

ii) Note that a party which does not comply with this provision faces the risk that a court could order specific performance See, for example Canadian Long Island Petroleums Ltd et al v Irving Industries (Irving Wire Products Division) Ltd et al, [1974] 6 W W R 385 (S C C), affirming [1973] 5 W W R 99 (Alta S C , App Div)

Paragraph (b) There is no reason for a disposing party to make the effort to include its estimate of an equivalent cash value unless at least one offeree might have an interest in exercising its rights

- B "Disposition Notice" means a written notice from a Disposing Party stating its intention to Dispose of all or any portion of its Working Interest pursuant to this Article 20 00, including a description of the Working Interest to be so Disposed of the identity of the intended assignee and the price or other consideration for which such Disposing Party is prepared to make such Disposition
- C "Disposing Party" means a Party which Disposes of or intends to Dispose of any of its Working Interest pursuant to this Article 20 00
- D "Offeree" means a Party other than the Disposing Party insofar as Subclause 20 02C (First Right Of Refusal) is applicable

20 02 Right To Dispose Of Interest

A Designation Of Disposition Mechanism

Except as required or permitted in the other Articles of this Operating Procedure, no Party shall Dispose of any portion of its Working Interest without first complying with the provisions of Subclause _____ of this Clause 20 02 (specify B or C)

B Written Consent To Disposition Required

A Party which intends to make a Disposition hereunder shall first notify the other Parties of its intention to make such Disposition and the identity of the proposed assignee, and obtain their written consent to such Disposition, which consent shall not be unreasonably withheld by a Party Failure of a Party to respond to such notice within thirty (30) days of the receipt thereof shall be deemed to be the consent of such Party to such Disposition Without limiting the generality of the foregoing sentence, it shall be deemed to be reasonable for a Party to withhold its consent to a Disposition if the Disposing Party has not demonstrated to the reasonable satisfaction of such Party that such proposed assignee has the financial capability to meet prospective obligations arising out of this Operating Procedure, including the subsequent development of a portion of the Agreement Lands

C First Right Of Refusal

- (a) A Disposing Party shall forward the Offerees a Disposition Notice
- (b) In the event the consideration described in the Disposition Notice cannot be matched in kind and such Disposition Notice does not include the Disposing Party's bona fide estimate of the value, in cash, of such consideration, an Offeree may, within ten (10) days of the receipt by the Offerees of such Disposition Notice, request the Disposing Party to provide

Paragraph (c) i) Note that the party which requests the cash value of consideration to be determined by arbitration assumes the risk that the arbitrated value will be higher than that proposed by the disposing party. If the provision stated that the arbitrated value could never exceed that proposed by the disposing party, there would be an incentive for an offeree to refer the matter to arbitration when the disposing party's estimate has been reasonable.

ii) An option which had been considered was to have the disputing party assign its value and then provide that the arbitrator may choose only one of the two alternative values. Although the simplicity of the suggested mechanism has an inherent attractiveness, there are two problems associated with such a mechanism. Firstly, the possibility of an adverse arbitration award might result in disposing parties assigning overly conservative cash values to the relevant interest, such that they may be offering the interest at less than fair market value. Secondly, such a mechanism might, in fact, encourage the use of arbitration. If a receiving party's only potential loss is the cost of an unsuccessful arbitration, some parties may gamble that they could acquire the interest for significantly less than its value.

The fact that the arbitrator is free to award the costs of the arbitration should be sufficient to deter frivolous references to arbitration in most cases.

Paragraph (d) Note that the offerees have no obligation to respond until 10 days following the receipt of the arbitrated value, if applicable. If the obligation were not suspended pending a determination by arbitration, a disposing party may not have the incentive to provide a reasonable estimate of the cash value of the consideration.

Paragraph (e) Note the reference to Subclause 20.02B in this paragraph. Without such a reference, the disposing party would be free to dispose of the interest to a third person which may not have satisfied the criteria in Subclause B.

such estimate to the Offerees whereupon the Disposing Party shall provide such estimate in a timely manner

- (c) In the event of a dispute as to the reasonableness of an estimate of the cash value of the consideration described in the Disposition Notice or provided pursuant to paragraph (b) of this Subclause C, as the case may be, the matter may be referred to arbitration pursuant to Article 22 00 (Arbitration) within ten (10) days of the receipt of such estimate. The equivalent cash consideration determined in such arbitration shall thereupon be deemed to be the sale price for the Working Interest described in such Disposition Notice (hereinafter referred to in this Article 20 00 as the Arbitrated Value)
- (d) Within i) thirty (30) days from the receipt of a Disposition Notice ii) ten (10) days from the receipt of an estimate provided pursuant to paragraph (b) of this Subclause C, or iii) if applicable, ten (10) days from receipt of notice of the Arbitrated Value, whichever is the latest, an Offeree may give notice to the Disposing Party that it elects to purchase the Working Interest described in such Disposition Notice (hereinafter referred to in this Article 20 00 as a "Notice of Acceptance") A Notice of Acceptance shall create a binding contractual obligation upon the Disposing Party to sell, and upon an Offeree giving a Notice of Acceptance to purchase, for the applicable price, all of the Working Interest included in such Disposition Notice. However if more than one Offeree gives a Notice of Acceptance each such Offeree shall purchase the Working Interest to which such Notice of Acceptance pertains in the proportion that its Working Interest bears to the total Working Interests of such Offerees
- (e) In the event that the Working Interest described in the Disposition Notice is not Disposed of to one or more of the Offerees pursuant to this Subclause C, the Disposing Party may, subject to obtaining the consents prescribed by Subclause B of this Clause 20 02, Dispose of such Working Interest at any time within one (1) year from the issuance of such Disposition Notice, provided that such Disposition is not on terms that are more favourable to such purchaser than those offered in the Disposition Notice
- (f) Following a Disposition pursuant to this Subclause C or one (1) year following the issuance of a Disposition Notice from which a Disposition did not result as the case may be, the provisions of this Subclause C shall once again apply to the Working Interest described in the Disposition Notice

- Clause 20 03** i) This provision is based on Clause 2402 of the conventional CAPL Operating Procedure
- ii) Note that paragraph (c) only applies in cases in which the interest being disposed of in the agreement lands represents a very small part of a large transaction

Subclause 20 04B Note that the disposing party's guarantee only applies during the period it remains a party

20 03 Exceptions To Clause 20 02

The provisions of Clause 20 02 (Right To Dispose Of Interest) shall not apply to the following Dispositions

- (a) a Disposition by a Party to an Affiliate, or in consequence of a merger or amalgamation of such Party with another corporation or pursuant to a Disposition by such Party of its entire Working Interest to a corporation in return for shares in such corporation or to a registered partnership in return for an interest in such partnership,
- (b) a Disposition by a Party of all, or substantially all, or of an undivided interest in all, or substantially all, of its petroleum and natural gas rights in Canada, and
- (c) a Disposition by a Party in which the Net Hectares being Disposed of by such Party in the Agreement Lands represent less than five percent (5%) of the total net hectares being disposed of by such Party pursuant to that transaction

Provided that the Disposing Party shall advise the other Parties of such a Disposition in a timely manner

20 04 Novation Upon Disposition

A. Effect Of Disposition

No Disposition of a Working Interest in the Agreement Lands pursuant to this Article 20 00, whether made voluntarily or by operation of law, shall be effective against the Parties which are not parties to such Disposition unless and until the Party or Third Person acquiring such Working Interest assumes the obligations of the Disposing Party with respect to such Working Interest through a novation agreement with the Parties

B Affiliate - Failure To Perform

Notwithstanding Subclause A of this Clause 20 04, in the event a Disposing Party Disposes of a Working Interest to an Affiliate of such Party and such Affiliate becomes a Party pursuant to such Subclause then, so long as such Parties remain Affiliates and Parties the Parties may proceed against such Disposing Party for the performance of such Affiliate's duties and obligations hereunder if such Affiliate fails to carry out any of such duties and obligations, regardless of whether all remedies have been commenced or exhausted against such Affiliate

Subclause 20 04C. 1) If the assignee is not novated into the agreement, the disposing party is required to ensure that the assignee takes subject to the provisions of the agreement. The most practical effect of this provision will be to tie the assignee into any area of mutual interest provision in the agreement the default remedies, the independent operations provisions, confidentiality provisions and disposition provisions. Of course, the assignee would be bound only to the assignor, such that the other parties would have to enforce any claim against the assignor.

11) In the event a party assigns a portion of its interest to secure its indebtedness, the assignee is bound by the provisions of the document.

Article 21 00. This provision is consistent with Article XIX of the conventional CAPL Operating Procedure.

Clause 21 01. 1) A party does not become a delinquent party if it only fails to settle its accounts hereunder. The operator already has legal remedies available to it to address that problem under Article 8 00.

11) Note the reference to the direction of the management committee. Given the exceptional nature of this remedy, the more prudent practice is to provide that the operator could only use the provision with the approval of the management committee. In the absence of that reference, the operator might be at risk if the delinquent party commenced legal proceedings.

C No Novation Agreement

Where the Party or Third Person which acquires a Working Interest from a Disposing Party (including for the purpose of this Subclause an assignment made by way of security for a Party's indebtedness) does not assume the obligations of the Disposing Party through a novation agreement in accordance with Subclause A of this Clause 20 04, the Disposing Party shall ensure that there is a separate agreement between the Disposing Party and its assignee pursuant to which such assignee shall hold such interest subject to the terms of the Agreement including a provision that such assignee cannot dispose of any portion of its interest without having such Disposing Party first comply with the provisions of this Article 20 00 on behalf of such assignee

20 05 Multiple Assignment Not To Increase Costs

If any Disposition of a Working Interest pursuant to this Article 20 00 is made to multiple assignees so as to increase the expenses or duties of the Operator, the Operator may require the assignees (and the Disposing Party if it retains a Working Interest) to appoint one of their number to represent all of them for the purposes of this Operating Procedure, unless arrangements satisfactory to the Operator are made to compensate it for such increased expenses or duties

21 00 DELINQUENT PARTY

21 01 Classification As Delinquent Party

If a Party changes its address and does not provide the other Parties with notice of its changed address for service and subsequently cannot readily be located or if a Party becomes inactive, is struck off the corporate register or otherwise consistently refuses or neglects to respond to communications addressed to it at its address for service, the Operator may, if so directed by the Management Committee, send a notice to such Party at its address for service stating therein that such Party is considered a delinquent Party within the meaning of this Article 21 00

21 02 Effect Of Classification As Delinquent Party

From the fifteenth (15th) day after the Operator has forwarded the notice described in Clause 21 01 (Classification As Delinquent Party), the delinquent Party shall, subject to Clause 21 04 (Restoration Of Status)

- (a) not be entitled to any further notice or communications from the Operator or any other Party with respect to any matter hereunder,

Paragraph 21 02(b) The delinquent party will be deemed not to participate in proposed joint operations unless an operation can be approved to be conducted for the joint account by less than unanimous approval

Paragraph 21 02(c) Where the remainder of the parties are taking a common course of action other than the conduct of an operation, the delinquent party will be deemed to join in such action

Clause 21 03 The option of paying funds into court was not included The operator requires the right to deduct that party's share of costs incurred for the joint account in a simple and timely manner In the event other amounts were owing, the operator would presumably exercise its rights under Clause 8 04

- (b) be deemed to have elected not to participate in any operation proposed to be conducted for the Joint Account, provided that such Party shall nevertheless remain responsible for its share of the cost of a Joint Operation approved pursuant to paragraph 4 04C(a) (Voting Procedure) and
- (c) be deemed to have elected to join in all surrenders, Abandonments, farmouts and other dispositions respecting the Working Interests of all the other Parties in all or any portion of the Agreement Lands

21 03 Funds To Be Held In Trust

In the event that funds accrue for the Joint Account or there are surplus funds following the sale of a portion of a delinquent Party's interest in the Joint Property pursuant to paragraph 8 04B(c) (Operator's Rights) the Operator shall hold such delinquent Party's share of such funds in trust for it, subject to the deduction of such Party's share of subsequent costs paid for the Joint Account

21 04 Restoration Of Status

If a delinquent Party subsequently communicates with the Operator, pays all amounts owing by it hereunder, satisfies all of its other outstanding obligations hereunder and undertakes in writing to comply from that time with the provisions of this Operating Procedure, such Party's rights and obligations hereunder shall be restored to it. In such event however, such Party shall be deemed to have ratified all actions taken pursuant to this Article 21 00, including, without limiting the generality of the foregoing, any elections or transactions made on its behalf pursuant to Clause 21 02 (Effect Of Classification As Delinquent Party)

21 05 Operator's Lien Not Affected

Nothing in this Article 21 00 shall derogate from the utilization of the provisions of Clause 8 04 (Operator's Lien) and Clause 8 05 (Reimbursement Of Operator) with respect to the financial default of a delinquent Party

Article 22.00 Although one might argue that the inclusion of an arbitration clause might encourage disputes, the more likely effect of such a clause would be to encourage the parties to negotiate contentious issues more realistically than they otherwise might.

22 00 ARBITRATION

22 01 Submission Of Certain Matters To Arbitration

A. Certain Disputes To Be
Referred to Arbitration Upon Request

If there is a dispute between or among the Parties with respect to

- (a) the classification of a well as a Delineation Well or as an Exploratory Well,
- (b) the determination of a Geologic Unit or the classification of a Geological Unit as a Potentially Productive Unit,
- (c) the correction of a Schedule pursuant to paragraphs 1 02B(b) (Revision Of Schedules) and 4 04C(b) (Voting Procedure),
- (d) the allocation of rights and obligations among the Parties pursuant to Subclause 3 02B (Matters Pertaining To Specific Portion Of Agreement Lands) and Article 8 00 (Joint Costs And Expenses),
- (e) audit exceptions, subject to paragraph 4 04C(b) (Voting Procedure),
- (f) the determination of the voting interest which is to be used in the conduct of a vote pursuant to Clause 4 04 (Decisions Of Management Committee - Conduct Of Votes),
- (g) the determination of a Prospect,
- (h) the determination of Operation Working Interests,
- (i) the costs and expenses for which the Operator is to be reimbursed pursuant to Subclause 5 03E (Compensation For Replaced Operator),
- (j) the determination of a Stratigraphic Equivalent pursuant to Article 9 00 (Independent Operations)
- (k) the allocation of Well Costs pursuant to Subclause 9 08G (Allocation Of Well Costs When Participation In Well Differs), or
- (l) the determination of an equivalent cash value pursuant to Subclause 20 02C (First Right Of Refusal),

Subclause 22.01B Paragraph 4.04C(b) states that other matters may be referred to arbitration with the unanimous consent of the management committee (See paragraph 4.05(d))

Subclause 22.02A. The nominated consultant would usually be a member of the Association of Professional Engineers, Geologists and Geophysicists of Alberta, a lawyer, a chartered accountant or a professional landman, depending on the matter to be resolved. Members of other professions may be appropriate for certain disputes though.

Since the arbitrator would ultimately be selected by the management committee or the court, it is unnecessary to restrict the list of professions.

Subclause 22.02B 1) The Article only provides for the selection of a single arbitrator. A two arbitrator one umpire provision was not utilized because of the fact that the dispute may have more than two sides, as could easily be the case with respect to the determination of a prospect.

a Party may give notice to the other Parties that it wishes such dispute referred to arbitration (hereinafter referred to in this Article 22 00 as a "Notice to Arbitrate"), whereupon such dispute shall be submitted to arbitration in accordance with the provisions of this Article 22 00

B Certain Disputes To Be Referred To Arbitration By Management Committee

Subject to Subclause A of this Clause 22 01, if there is a dispute between or among the Parties with respect to any matter arising out of this Operating Procedure which is not determinable by the voting procedures contained in this Operating Procedure, a Party may refer such dispute to the Management Committee for a determination of whether such dispute shall be submitted to arbitration in accordance with the provisions of this Article 22 00, provided that if such a dispute is between or among less than all of the Parties, such dispute shall be submitted to arbitration if all of the Parties to such dispute agree to submit such dispute to arbitration

22 02 Selection Of Arbitrator

A. Operator To Request Nominations

Within five (5) days of the receipt of a Notice to Arbitrate or the determination to refer a dispute to arbitration pursuant to Subclause 22 01B (Certain Disputes To Be Referred To Arbitration By Management Committee) as the case may be the Operator shall by notice to the Parties involved in such dispute, request such Parties to nominate independent consultants (or firms thereof) who they believe have the technical expertise to be qualified to act as the arbitrator in such arbitration Subject to Subclause C of this Clause 22 02, each such Party may nominate one such independent consultant (or firm of such consultants) by notifying the other Parties involved in such dispute of its nomination within five (5) days of the receipt of such notice from the Operator

B Management Committee To Select Arbitrator

Subject to Subclause C of this Clause 22 02, the Management Committee or the Parties to such dispute, as the case may be, shall meet to select a single arbitrator from the list of nominees submitted by the Parties pursuant to Subclause A of this Clause 22 02. If after voting four (4) times the Management Committee does not select such arbitrator or if the Parties to such dispute cannot agree on the selection of an arbitrator, as the case may be, the Operator shall thereupon forthwith make application to a judge of the Court of Queen's Bench of the Province of Alberta pursuant to the Arbitration Act of the Province of Alberta (R S A. 1980 c A-43, as amended from time to time) for the appointment of a single arbitrator from such list, as modified by Subclause C of this Clause 22 02.

Subclause 22.03B Subject to the modifications included in the Article, the procedures in the Arbitration Act shall apply to the arbitration.

C Certain Nominees Ineligible To Be Selected Arbitrator

No Party which makes a nomination pursuant to Subclause A of this Clause 22 02 shall so nominate an independent consultant (or firm thereof) which is acting (or has acted) on such Party's behalf with respect to the Agreement Lands. Any Party receiving notice of another Party's nominee shall immediately advise the other Parties if such nominee is so acting (or has so acted) on such receiving Party's behalf, whereupon such nominee shall be excluded from the list of potential arbitrators. In such event, the Party which had nominated such nominee shall be entitled to nominate an additional independent consultant in replacement therefor within the later of two days following receipt of such notice or the expiry of the period described in Subclause A of this Clause 22.02.

22 03 Conduct Of Arbitration

A. Instruction To And Duties Of Arbitrator

The arbitrator selected pursuant to Subclause 22 02B (Management Committee To Select Arbitrator) shall, within seven (7) days of his selection, be provided with

- (a) all relevant data obtained for the Joint Account and pertaining to the relevant dispute which is held by the Operator,
- (b) further submissions by Parties desiring to make such submissions at a meeting of the Parties in the Operator's Calgary office, and
- (c) an instruction from the Operator to render decision on only such matters as remain in dispute

B Arbitration Procedures

Except to the extent modified in this Article 22.00, the arbitrator shall conduct such arbitration in accordance with the provisions of the Arbitration Act of the Province of Alberta.

C Arbitrator's Decision

The arbitrator shall advise the Parties of the decision on the dispute which is the subject of the arbitration within thirty (30) days of such arbitrator's selection pursuant to Subclause 22.02B (Management Committee To Select Arbitrator). Such decision, in final form, shall be final and binding upon the Parties, subject to Subclause D of this Clause 22 03.

Subclause 22.03D This right of review would apply at law in the absence of this provision anyway

Subclause 22.03E. This provision is consistent with Section 9 of Schedule 2 of the Alberta Arbitration Act

Clause 23 02. The most common example of such amendments are the issuance of amended schedules pursuant to Clause 1 02 and a notice of change of address pursuant to Clause 18 03

Clause 23 04 1) The Agreement would presumably be modified if there were prior encumbrances respecting portions of the lands

11) A party which proposes to encumber its interest must structure the agreement so that the encumbrance would terminate in the event of a bona fide surrender or forfeiture One way to do this might be to provide the royalty owner with the initial opportunity to acquire the working interest/participate in the relevant well

D Review Of Arbitrator s Decision

Notwithstanding Subclause C of this Clause 22 03 any Party may apply by Statement of Claim within thirty (30) days of an arbitrator s decision hereunder to the Court of Queen s Bench of Alberta for a declaration that such decision is void or erroneous by reason of (i) an error of law; (ii) a patent error in a determination of fact, (iii) a denial of natural justice, or (iv) the arbitrator having exceeded the jurisdiction given to it under this Article 22 00 Upon ruling on the application for a declaration, the Court of Queen s Bench may either confirm the arbitrator s decision or declare such decision to be erroneous and of no effect, in which case the Court may direct the Parties to resubmit to arbitration or may correct the decision

E. Costs Of Arbitration

The costs of an arbitration are in the discretion of the arbitrator of such arbitration, who shall direct by which Parties and in what manner such costs shall be paid

23 00 MISCELLANEOUS PROVISIONS

23 01 Time Of Essence

Time shall be of the essence in this Operating Procedure

23 02 No Amendment Except In Writing

Except as otherwise provided in this Operating Procedure, no amendment or variation of the provisions of this Operating Procedure shall be binding upon any Party unless and until it is evidenced in writing executed by the Parties

23 03 Enurement

Subject to the express provisions hereof this Operating Procedure shall enure to the benefit of and shall bind the Parties and their respective successors and assigns and the heirs, executors, administrators and assigns of natural persons who become Parties

23 04 Responsibility For Encumbrances

Notwithstanding any other provision of this Operating Procedure, if a Party s Working Interest is or becomes burdened with any overriding royalty net profits interest production payment, other charge of a similar nature which is not borne for the Joint Account or other encumbrance, such Party shall be solely responsible for such additional burden In the event of any surrender or

Clause 23 06 This provision is structured broadly enough to be used with respect to both jurisdictions with perpetuities legislation, such as Alberta, and other jurisdictions in which the conventional principles of common law apply

forfeiture of all or any portion of a Party's Working Interest as herein provided, such surrendered or forfeited interest shall be freed of any such burden at the sole cost and expense of such Party

23 05 Supersedes Earlier Agreements

The Agreement and this Operating Procedure supersede all other oral or written agreements, documents, memoranda, correspondence or other communications among the Parties, or any of them, with respect to the Agreement Lands, or any portion thereof, and expresses all of the terms and conditions agreed upon by the Parties with respect to the Agreement Lands, except where otherwise expressly agreed between the parties to such previous agreement or as required by the Regulations. Insofar as two or more Parties agree that such earlier agreement shall continue to apply, it shall apply only to those Parties agreeing to its application.

23 06 Perpetuities

Notwithstanding anything contained in this Operating Procedure, the right of any Party to acquire any interest in the Agreement Lands hereunder from any other Party shall not extend beyond either the period prescribed by the applicable perpetuities Regulations or, in the absence of such Regulations, twenty-one (21) years after the lifetime of the last survivor of the lawful descendants now living of Her Majesty Queen Elizabeth II.

23 07 Applicable Laws

Subject to the obligation of the Parties to comply with the Regulations in the performance of operations hereunder, this Operating Procedure shall be interpreted and construed pursuant to the laws of the Province of Alberta and the laws of Canada applicable therein. The courts of the Province of Alberta shall have exclusive original jurisdiction to adjudicate upon the application and interpretation of the Regulations applicable to matters arising out of or relating to this Operating Procedure to the extent that such jurisdiction can be given by an agreement among the Parties. The venue for any such action arising out of this Operating Procedure shall be Calgary, Alberta, insofar as Calgary can be the venue for such action.

23 08 Use Of Names

Except where so required by governmental or judicial authority, each Party agrees that it shall not use or permit to be used the name of any other Party, either directly or indirectly, in connection with the financing, in whole or in part, of any operations herein provided for or in connection with the offering for sale of shares of stock or any other securities or the formation of any enterprise of any kind, without in each instance first obtaining the written consent of such other Party.

Clause 23 10 A court has limited jurisdiction to provide a party with relief against forfeiture, notwithstanding the clear wording of an agreement.

This Clause is included to minimize the possibility that a party could turn to a court for relief in the event that a provision were being utilized to its detriment.

23 09 Further Assurances

Each Party shall from time to time and at all times do all such further acts and execute and deliver all further deeds and documents as may be reasonably required in order to perform and to fulfill the terms of this Operating Procedure

23 10 Warver Of Relief

The Parties acknowledge that any default, forfeiture or penalty provisions contained in this Operating Procedure are in view of the risks inherent in the exploration for Petroleum Substances reasonable and equitable Each Party waives any and all rights which it may have at law, in equity or by the Regulations, against default, forfeiture or penalty if such provisions are invoked.

23 11 Term

Subject to Clause 15 04 (Confidentiality Requirement To Continue), this Operating Procedure shall terminate when no portion of the Agreement Lands is owned jointly by two (2) or more Parties or at that later date upon which, joint ownership continuing, all Documents of Title have terminated and all wells on the Agreement Lands have been Abandoned, all equipment relating thereto has been salvaged and a final settlement of accounts has been made among the Parties provided that those provisions related to audit, liability, indemnity, disposal and salvage of material and enforcement on default shall survive for six (6) years thereafter