



ECMC SURFACE USE AGREEMENT OPERATOR GUIDANCE

FORM 2A ATTACHMENT

Rule 304.b.(12).B. - Surface Use Agreement

Document Control

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Rule Citation

304.b.(12).B. Surface Owner Information

A redacted version of the Surface Use Agreement or a memorandum describing the Surface Use Agreement that includes a description of the lands subject to the agreement, signatures of the parties to the agreement, dates of signature, and any provisions of the agreement that are relevant to the Form 2A.

Definition:

Surface Use Agreement shall mean any agreement in the nature of a contract or other form of document binding on the Operator, including any lease, damage agreement, waiver, local government approval or permit, or other form of agreement, which governs the Operator's activities on the surface in relation to locating a Well, Multi-Well Site, Production Facility, Pipeline, any other Facility that supports oil and gas or Geothermal Resource development, located on the Surface Owner's property.

Associated rules are included in Appendix A.

Purpose

The Surface Use Agreement (SUA) details an agreement between the Operator and the Surface Owner for proposed Oil & Gas or Deep Geothermal activities. It provides proof of Surface Owner protection per Rule 704, and the right to construct if the Surface Owner is not a leased mineral owner. An SUA can provide the basis for an exception to some of the requirements of the 600 Series Rules. An SUA can provide the Surface Owner's waiver of any notices, meeting, or consultation required by the rules, if the rule is cited in the SUA.

Guidance/Requirements

When a Surface Use Agreement is Required

1. The SUA is a required attachment if it provides the right to construct for the Location and is so indicated on the Form 2A. The SUA is not required if the Operator is the Surface Owner, if the right to construct is granted through an Oil and Gas Lease, or the location is on Federal Surface as is indicated on the Form 2A.
2. The SUA is required if an SUA has been executed specifically for the injection of fluid for a Location that will have a Class II underground Injection Control (UIC) Well, or facilities related to a Class II UIC Well.
3. The SUA is a required attachment if the operator is requesting an exception or variance from any notices, meeting, or consultation required by the Rules, and it provides the Surface Owner's waiver of the required notices, meeting, or consultation.

Required Elements on a Surface Use Agreement

1. The SUA must include the legal description of the lands subject to the agreement. If the description is not by standard governmental survey, but is by platted parcels or is in metes and bounds, a map of the subject lands is also required.

2. The SUA must clearly state that it applies to Oil and Gas operations or Deep Geothermal operations.
3. The SUA must have the signatures of both the Operator and the Surface Owner, and should be signed and stamped by a Notary.
 - a. The SUA may have been executed by another operator. If so, it must include a clause stating that it is binding upon any other successors and assigns. A comment stating this must be included on the Form 2A.
4. The SUA must include the date of execution if it is providing the basis for an exception, and the expiration date if applicable.
5. All Personal Identification Information (PII) such as Social Security Numbers within the SUA must be redacted.
6. The document must be legible.

Additional Information

Common Errors and Issues Encountered by ECMC Staff

1. SUA attached is of poor quality, grainy, or otherwise illegible.
2. SUA attached does not cover the correct lands.
3. SUA attached does not have the correct signatures.

General Notes

1. If an Oil and Gas Location has one or more Wells for which the right to construct is the oil and gas lease, the right to construct noted on the Form 2A for the location is also the oil and gas lease, and the SUA is not required for the Form 2A. If the Oil and Gas Location also has Wells for which the right to construct is the SUA, the SUA should be attached to the Form 2A.
2. If the SUA provides the right to construct for a location, the SUA should be attached to the Form 2A.
3. If the SUA contains the Surface Owner's waiver required for a requested exception or variance, a comment must be included on the Form 2A that indicates the location of the waiver within the SUA.

4. If an Oil and Gas Location requires an SUA for any other reason, it should be attached to the Form 2A.
5. A memorandum of an SUA may be attached in lieu of the full SUA only if it includes all the requirements listed above.
6. The dollar amounts may be redacted from the SUA at the Operator's discretion.
7. A sworn affidavit of an SUA is not acceptable.
8. An Operator may attach an informational SUA when it is not required, if the Operator wants to include it for other reasons, such as evidence of being a good neighbor.

Frequently Asked Questions

1. N/A

Document Change Log

| Change Date | Description of Changes |
|---------------|------------------------|
| Feb 8, 2023 | Document created |
| June 11, 2025 | Updated for new rules |

Appendix A - Associated Rules

223.b.(1). Confidential Information

Confidential information may include:

- (1). Monetary amounts, payment terms, drilling obligations, or personal information listed on Surface Use Agreements.

604.a.(4). Setbacks and Siting Requirements; Well Location Requirements

No Working Pad Surface will be located less than 500 feet from 1 or more Residential Building Units not subject to a Surface Use Agreement or waiver, that includes informed consent from all Building Unit owner(s) and tenant(s) explicitly agreeing to the proposed Oil and Gas Location siting.

704.a. Surface Owner Protection Bonds

When Surface Owner Protection Bonds Are Required. To protect Surface Owners from unreasonable crop loss or land damage caused by Oil and Gas Operations, if a Surface Owner is not a party to a lease, Surface Use Agreement, or other relevant agreement with an Operator, the Operator will provide Financial Assurance to the Commission prior to commencing any operations with heavy equipment on that Surface Owner's property.

- (1) Amount of Financial Assurance. Operators will provide Financial Assurance of:

- i. \$4,000 per Well for non-irrigated land;
- ii. \$10,000 per Well for irrigated land; or
- iii. \$100,000 as a statewide blanket bond.

- (2) State Lands. If Oil and Gas Operations are conducted on state lands and a bond has been filed with the State Board of Land Commissioners, an Operator need not file a Surface Owner protection bond pursuant to this Rule 704.

704.c.(1).D. Release of Financial Assurance.

Financial Assurance provided pursuant to this Rule 704 will be held until:

(1) For an individual Surface Owner protection bond:

D. The Operator enters into a Surface Use Agreement, lease, or other relevant agreement with the Surface Owner.

704.c.(2).D. Release of Financial Assurance.

Financial Assurance provided pursuant to this Rule 704 will be held until:

(1) For a blanket Surface Owner protection bond:

D. The Operator enters into a Surface Use Agreement, lease, or other relevant agreement with all Surface Owners subject to the Surface Owner protection bond.

803.g.(3). Application Requirements for Class II Underground Injection Control Wells

Form 31, Underground Injection Formation Permit Application - Intent. An application for a Class II UIC Well will include the following information:

(3) Authorization for Surface Use.

A. To construct or recomplete a disposal Well or Simultaneous Injection Well at a surface location, the Operator will provide a Surface Use Agreement, unless the Owner or Operator of the disposal Well or Simultaneous Injection Well is also the Surface Owner.

B. To construct or recomplete an Enhanced Recovery Well at a surface location, the Operator will provide a Surface Use Agreement, a copy of a lease, or a unit operating agreement, unless the Owner or Operator of the Enhanced Recovery Well is also the Surface Owner.

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- C. For all Class II UIC Wells, Surface Use Agreement(s), leases, or unit operating agreements will state explicitly that the injected Fluids may contain E&P Waste from Oil and Gas Operations.