

# COGCC Form 2A Attachment Guidance: Surface Use Agreement

11-18-2014

## 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 or any other Oil and Gas Facility that supports oil and gas development located on the Surface Owner's property.

## Rule / Policy Citation

Numerous rules refer to a Surface Use Agreement:

### **303.b.(3)O**

Contact information for the Surface Owner(s) and an indication as to whether there is a Surface Use Agreement(s) or any other agreement(s) between the applicant and the Surface Owner(s) for the proposed Oil and Gas Location.

### **303.b.(3)T**

The Operator shall indicate on the Form 2A whether it intends to seek a location exception under Rules 604.b.(2) or b.(3), and, if so, shall attach the relevant Surface Use Agreement(s).

### **318A.a.(3)**

Absent a showing of good cause, which shall include the existence of a surface use or other agreement with the surface owner authorizing a surface well location outside of a GWA window, all surface well sites shall be located within a GWA window.

### **604.b.(2) Existing Surface Use Agreement or Site Specific Development Plan.**

The Director shall grant an exception to setback requirements set forth in rule 604.a. for a Surface Use Agreement or site specific development plan (as defined in § 24-68-102(4)(a), C.R.S. that establishes vested property rights as defined in § 24-68-103, C.R.S.), that was executed on or before August 1, 2013, and which expressly governs the location of Wells or Production Facilities on the surface estate, provided mitigation measures imposed in the Form 2 or Form 2A will eliminate, minimize or mitigate noise, odors, light, dust, and similar nuisance conditions to the extent reasonably achievable and the location complies with all other safety requirements of these Commission Rules.

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## **604.b.(3) Surface Development after August 1, 2013 Pursuant to a Surface Use Agreement or Site Specific Development Plan.**

A Surface Owner or Building Unit owner and mineral owner or mineral lessee may agree to locate future Building Units closer to existing or proposed Oil and Gas Locations than otherwise allowed under Rule 604.a. pursuant to a valid Surface Use Agreement or site specific development plan (as defined in § 24-68-102(4)(a), C.R.S., that establishes vested property rights as defined in § 24-68-103, C.R.S.) that expressly governs the location of Wells or Production Facilities on the surface estate. All setback, notice, consultation and meeting requirements contained in Rules 305, 306, and 604.a shall apply with respect to all Building Units that are not governed by the applicable SUA or site specific development plan. Copies of any applicable SUA or site specific development plan shall be submitted by the Operator with a Form 2A Application or associated Form 2 for a proposed Oil and Gas Location on the relevant surface estate.

## **703. Surface owner protection.**

Operators shall provide financial assurance to the Commission, prior to commencing any operations with heavy equipment, to protect surface owners who are not parties to a lease, surface use or other relevant agreement with the operator from unreasonable crop loss or land damage caused by such operations.

### Purpose

The Surface Use Agreement (SUA) documents an agreement between the Operator and the Surface Owner for proposed Oil & Gas activities. It provides proof of surface owner protection per Rule 703 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 Rule 604, per Rule 604.b.(2) or Rule 604.b.(3). It can provide surface owner consent to an exception location per Rule 318A.a(3). 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.

### Requirements

1. The Surface Use Agreement (SUA) is a required attachment if it provides the "Right to Construct" for the location and is so indicated on the Form 2A.

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2. An SUA specifically for injection is a required attachment for the Oil and Gas Location Assessment for an injection well or facilities related to an injection well.
3. The SUA is a required attachment if the operator is requesting an exception per Rule 604.b.(2) or Rule 604.b.(3).
4. 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 the SUA provides the surface owner's waiver of the required notices, meeting, or consultation. (See Note # 3 below.)
5. 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.
6. The SUA must clearly state that it applies to oil and gas operations.
7. The SUA must have the signatures of both the Operator and the Surface Owner.
8. The SUA must include the date of execution if it is providing the basis for an exception per Rule 604.b.(2).
9. The SUA must include specific well and/or production facility locations if it is providing the basis for an exception per Rule 604.b.(2). or per Rule 604.b.(3).
10. All Social Security Numbers within the SUA must be redacted.
11. The document must be legible.
12. The SUA attached may have been executed by another operator. If so, it must include a clause stating that it is binding upon any other assigns. A comment stating this must be included on the Form 2A.

## Common Errors and Issues Encountered by COGCC Staff

1. The Surface Use Agreement (SUA) is not attached to a Form 2A for which the SUA provides the right to construct the location.
2. The SUA is not attached to a Form 2A for an injection well or for the facilities related to an injection well or is not specifically for injection.
3. The SUA is not attached to an application for which the operator is requesting an exception per Rule 604.b.(2) or Rule 604.b.(3).
4. The SUA is not attached to an application for which the operator is requesting an exception or variance from any notices, meeting, or consultation required by the rules and the SUA provides the surface owner's waiver of the required notices, meeting, or consultation.

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5. The SUA does not include the legal description of the lands subject to the agreement.
6. A map of the subject lands is not included with an SUA in which the description of the lands is not a standard governmental survey, but is by platted parcels or is in metes and bounds.
7. The SUA does not clearly state that it applies to oil and gas operations.
8. The SUA does not have the signatures of both the Operator and the Surface Owner.
9. The SUA providing the basis for an exception per Rule 604.b.(2) does not include the date of execution.
10. The SUA providing the basis for an exception per Rule 604.b.(2) or Rule 604.b.(3) does not include specific well and/or production facility locations.
11. The SUA contains Social Security Numbers that have not been redacted.
12. A memorandum of an SUA is attached (in lieu of the full SUA) that does not include all the requirements listed above.
13. An affidavit of an SUA is attached, rather than the actual SUA or a memorandum of an SUA.
14. The document is not legible.
15. There is no statement that the SUA was executed by another operator.

## Notes

1. If a 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. This is true even if the location also has wells for which the "Right to Construct" is the SUA; the SUA only needs to be attached to the Form 2s for which the "Right to Construct" is the SUA.
2. If the SUA provides the "Right to Construct" for a location, the SUA should be attached to the Form 2A even if it is also attached to the Form 2s for some or all of the wells on the location.
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 a location requires an SUA for any other reason, it should be attached to the Form 2A even if it is also attached to the Form 2's for the wells on the location.

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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 always attach an "informational" SUA that is not required, but which the operator desires to include for other reasons, such as evidence of being a good neighbor.