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## SURFACE USE AGREEMENT

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APR 14 2009

COGCC

This Surface Use Agreement ("Agreement") is dated and made effective this 25<sup>th</sup> day of March, 2009, and is between Kerr-McGee Oil & Gas Onshore LP ("KMG") with an address of 1099 18<sup>th</sup> Street, Suite 1800, Denver, CO 80202, and KCB, LLC (collectively hereinafter referred to as "Surface Owner") all with an address of 14339 WCR 74, Eaton, CO 80615.

A. Surface Owner owns the surface estate of that certain tract of land more particularly described on Exhibit "A" attached hereto, being LOT B of RE-4632 being a part of the N2NE4 of Section 14, T5N, R64W, of the 6<sup>th</sup> P.M. Weld County, Colorado (hereinafter referred to as the "Property");

B. Surface ownership of the Property is subject to the rights of the oil and gas mineral leasehold estate, a portion of which is now owned by KMG;

C. Surface Owner plans to develop the surface of the Property for residential use in the future;

D. KMG currently operates 2 wells on the Property, known as Seyler 2-14 and Seyler 41-14 (the "Existing Wells") generally located on the northeast quarter of the north half of Section 14, described above, and has the right to develop its oil and gas leasehold estate by drilling additional wells (the "Future Wells") on the Property, and

E. This Agreement sets forth the parties' rights and obligations regarding the relationship between the development of the Property by Surface Owner and KMG's operation and development of its oil and gas leasehold estate underlying the Property, such rights and obligations to be binding upon the parties' successors and assigns.

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. AREAS RESERVED FOR THE EXISTING WELLS AND FUTURE WELLS.

Surface Owner shall set aside and provide to KMG that portion of the Property hereinafter referred to as the "Oil and Gas Operations Areas", such areas being depicted on Exhibit "B" attached hereto. The Oil and Gas Operations Areas are to be made available to KMG in their present condition for any operations conducted by KMG in connection with the Existing Wells or any Future Wells, including, but not limited to, drilling and production activities, workovers, well deepenings, recompletions, fracturing and replacement wells. Except for the Oil and Gas Operations Areas, and the access roads and easements associated with flowlines, gathering lines and pipelines as provided in this Agreement, KMG shall not occupy the surface of the Property except in the event of an emergency or for reasonable incidental, temporary and non-damaging activities, for which KMG shall be strictly and solely responsible for any damages that may occur.

## **2. WELL LOCATIONS.**

KMG shall have the right to drill Future Wells within the Oil and Gas Operations Areas, including horizontal and directional wells that produce from and drain lands other than the Property provided such lands are validly pooled with all or any portion of the lands included in KMG's oil and gas lease covering the Property, and so long as such locations are permitted locations under the then applicable well spacing regulations of the Colorado Oil and Gas Conservation Commission ("COGCC") or exceptions granted thereto by the Director of the COGCC. As part of the consideration for this Agreement, Surface Owner hereby waives its right to, and covenants that it shall not protest or object to any such exception location or application for same by KMG. KMG shall not otherwise have the right to drill new wells on the Property. Notwithstanding the foregoing, the wellhead location of any Future Well drilled from any Oil and Gas Operations Area shall not be closer than 200' from a residential lot line.

## **3. SETBACK REQUIREMENTS.**

Surface Owner will not locate any lot line, building, or structure within any Oil and Gas Operations Area. Surface Owner understands and acknowledges that the COGCC has rules and regulations that apply to the distance between a wellhead and public roads, production facilities, building units and surface property lines, among other things. In order to give full effect to the purposes of this Agreement, Surface Owner hereby waives its right to object to the location of any of KMG's facilities on the basis of setback requirements in the rules and regulations of the COGCC, as they may be amended from time to time. Surface Owner further and similarly waives its right to object to any other state or local setback requirements or other requirements or regulations that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of KMG, its successors and assigns, to explore for and produce the oil and gas in accordance with this Agreement. KMG or its successors and assigns may cite the waiver in this paragraph in order to obtain a location exception or variance under COGCC rules or from any other state or local governmental body having jurisdiction. Surface Owner agrees not to object to the use of the surface in the Oil and Gas Operations Areas so long as such use is consistent with this Agreement and Surface Owner will provide KMG or its successors and assigns with whatever written support they may reasonably require to obtain permits from the COGCC or any local jurisdiction.

## **4. GATHERING LINES AND FLOWLINES.**

Subject to the limitations hereinafter described, KMG has a continuing right and entitlement to own, operate, maintain, repair and replace all flowlines, gathering lines and other pipelines that may be necessary or convenient to its operations on the Property. Although this Agreement is intended to confine the placement of those pipelines to certain specified locations within the Property, nothing herein shall be construed as a limitation on KMG's ultimate right to make all necessary well connections to any Existing or Future Well. The potential development plans for future residential development may anticipate the relocation of certain existing gathering lines or flowlines ("Existing Pipelines") to a designated easement corridor shown on Exhibit "B" as the "Petroleum Pipeline Easement." It is further anticipated that any additional pipelines, flowlines and gathering lines that may be required in the future ("Future Pipelines") may also need to be placed within, or relocated to the Petroleum Pipeline Easement. All such relocations shall be at Surface Owner's cost and expense.

At such time as Surface Owner desires to have any Existing Pipelines or Future Pipelines relocated to the Petroleum Pipeline Easement, it shall give written notice to KMG who shall promptly prepare, or commission the preparation of, a cost estimate to accomplish the relocation. As soon as available, KMG will then provide the cost estimate to Surface Owner who will then have the opportunity to review same and make a final determination about whether it wishes to proceed with the relocation. If Surface Owner elects to have KMG effectuate the pipeline relocation, it shall tender the estimated costs of such to KMG together with its written request to commence the project as soon as reasonably practicable, or as otherwise requested by Surface Owner. If it has not already done so, Surface Owner shall also deliver to KMG or KMG's affiliate, Kerr McGee Gathering LLC ("Kerr McGee Gathering"), an executed and acknowledged Pipeline Right of Way Grant on the form that is attached hereto as Exhibit "C" in order to convey the Petroleum Pipeline Easement lands as shown on Exhibit "B". The Petroleum Pipeline Easement shall be fifty feet (50') in width during construction, installation or relocation operations and otherwise reduced to thirty feet (30') in width for post-construction usage.

All relocated and Future Pipelines shall be located within the Petroleum Pipeline Easement unless otherwise agreed upon between Surface Owner and KMG. KMG acknowledges that the Petroleum Pipeline Easement will be non-exclusive and agrees that it will not object to its concurrent use by other oil and gas operators or utilities, as Surface Owner may grant from time to time, so long as such other parties comply with KMG's pipeline guidelines, attached hereto as Exhibit "D". Notwithstanding the foregoing, Surface Owner shall not permit, nor shall it place any other utility or structure within ten feet horizontally or two feet vertically of any KMG pipeline. The Petroleum Pipeline Easement and Oil and Gas Operations Areas shall be depicted and labeled on all subdivision plats submitted to Weld County.

If Surface Owner's development plans anticipate that roadways will or may in the future cross over existing Pipelines, Surface Owner will request that KMG pothole the existing Pipelines to check the depth of such Pipelines. Prior to Surface Owner's installation of a new roadway, KMG will lower the affected Pipelines to sufficient depth for the road elevations. Surface Owner agrees to pay KMG the cost of inspecting and lowering the Pipelines, as well as the cost of any sub-grade work required to achieve the road construction specifications.

KMG shall not, without the prior written consent of Surface Owner, have the right to lay additional flowlines or pipelines on the Property, outside the Petroleum Pipeline Easement. All flowlines and pipelines shall be buried to a depth of approximately 48 inches from the surface. Surface Owner shall maintain a minimum of 48 inches and not more than 72 inches of cover over all pipelines and flowlines during any of Surface Owner's operations on the Property. The construction and burying of additional flowlines, gathering lines and pipelines shall be at the sole cost and expense of KMG or its gas purchaser.

## **5. ACCESS.**

Surface Owner shall provide KMG with continuous non-exclusive access to all of the Oil and Gas Operations Areas and the Petroleum Pipeline Easement. The access roads to be used by KMG will either be those roads that currently are in place or those that are anticipated to be constructed by Surface Owner at its sole cost and expense as part of Surface Owner's

development of the Property. All access roads constructed shall be of sufficient scope to allow KMG to conduct its oil and gas operations and shall be at least 30 feet in width and built to withstand a minimum of 104,000 pounds and 26,000 pounds per axle. KMG agrees to access the Property according to the routes depicted and described on the attached Exhibit "B" once the streets are constructed by Surface Owner and Surface Owner provides KMG notice of such but KMG may continue to use its present access routes until that time and until receipt of such notice from Surface Owner.

## **6. BATTERIES AND EQUIPMENT.**

KMG shall have the right to locate, build, repair and maintain tanks, separators, dehydrators, compressors and other equipment reasonably appropriate for the operation and production of the Existing Wells or any Future Wells only within the Oil and Gas Operations Areas

With respect to KMG's equipment and facilities other than flowlines or pipelines:

- a. KMG shall install and maintain, at its sole cost and expense, all fences around the Existing Wells and any Future Wells in compliance with the Rules and Regulations of the COGCC;
- b. KMG shall install and maintain, at its sole cost and expense, all gates and locks reasonably necessary for the security of any wells or facilities in the Oil and Gas Operations Areas. Such gates and locks shall be the standard gates and locks used by KMG;
- c. KMG shall paint any production facilities for any wells, including wellhead guards, with paint that is approved by the COGCC; and
- d. Surface Owner shall not inhibit KMG's access to the Oil and Gas Operations Areas or inhibit KMG's operations within the Oil and Gas Operations Areas by landscaping or other improvements, unless otherwise agreed upon between Surface Owner and KMG.

## **7. NOTICE OF FUTURE OPERATIONS.**

KMG shall provide at least seven (7) days prior written notice to Surface Owner of any operations in connection with the reworking, fracturing, deepening or recompletion operation on the Existing Wells or any Future Wells; provided, however, that KMG shall provide at least thirty (30) days prior written notice to Surface Owner and/or any homeowner's association formed by Surface Owner that is associated with the Property upon the drilling of any Future Wells. Regardless of the foregoing notice requirements, KMG shall have immediate access to any of its facilities in the event of an emergency

After receipt of the above notice, but not less than five (5) working days prior to KMG's mobilization on the applicable Oil and Gas Operations Areas, either KMG or Surface Owner may request an on-site meeting. The purpose of the meeting shall be to inform Surface Owner of

the expected activity and to coordinate site access, hazards, barricades, restoration or any other issues that affect the use and safety of Surface Owner's development.

**8. NOTICES TO HOMEOWNERS AND BUILDERS.**

Surface Owner shall furnish all buyers of the Property from Surface Owner with a plat or map showing the Oil and Gas Operations Areas and the Easement. In addition, Surface Owner shall provide notice to all builders, homeowners, homeowner associations and other buyers of the Property from Surface Owner that:

a. There may be ongoing oil and gas operations and production in the Oil and Gas Operations Areas on the surface of the Property;

b. There are likely to be additional Future Wells drilled and oil and gas operations and production from the Oil and Gas Operations Areas that affect the surface of the Property;

c. Heavy equipment may be used by KMG from time to time for oil and gas production operations and that such operations may be conducted on a 24 hour basis;

d. Future purchasers of all or a portion of the Property, as successors in interest to Surface Owner, will be acquiring a proportionate interest in Surface Owner's rights under this Agreement and assuming those obligations undertaken by Surface Owner pursuant to this Agreement, and

e. Homeowner associations and buyers of individual lots or homes, as successors in interest to Surface Owner, will be acquiring a proportionate interest in Surface Owner's rights under this Agreement, and will be subject to the waivers contained in Sections 3, 9, and the covenants contained in Section 3 prohibiting the location of any building or structure within the Oil and Gas Operations Areas or the Easement and waiving objection to any setback rules of the COGCC or any local jurisdiction

**9. DRILLING AND COMPLETION OPERATIONS.**

KMG shall endeavor to diligently pursue any drilling operations to minimize the total time period and to avoid rig relocations or startup during the course of drilling. Surface Owner waives any objections to continuous (i.e., 24-hour) drilling operations

**10. GOVERNMENTAL PROCEEDINGS.**

Surface Owner shall not oppose KMG in any agency or governmental proceedings, including but not limited to the COGCC, Weld County or other governing body proceedings, related to KMG's operations on the Property, including but not limited to drilling, workovers, well deepenings and recompletions, provided that KMG's position in such proceedings is consistent with this Agreement

**11. LIMITATION OF LIABILITY, RELEASE AND INDEMNITY.**

a. No party shall be liable for, or be required to pay for, special, punitive, exemplary, incidental, consequential or indirect damages to any other party for activities undertaken within the scope of this agreement,

b. Except as to claims arising out of pollution or environmental damage (which claims are governed by Section 12 below) or out of other provisions of this Agreement (which claims shall be governed by the terms of this Agreement), each party shall be and remain responsible for its own liability for all losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation attorneys' fees and other costs associated therewith (all of the aforesaid herein referred to collectively as "Claims"), arising out of or connected with each such party's ownership or operations on the Property, no matter when asserted, subject to applicable statutes of limitations. Each such party shall release, defend, indemnify and hold the other parties, their officers, directors, employees, successors and assigns, harmless against all such Claims. This provision does not, and shall not be construed to, create any rights in persons or entities not a party to this Agreement, nor does it create any separate rights in parties to this Agreement other than the right to be indemnified for Claims as provided herein;

c. Upon the assignment or conveyance of a party's entire interest in the Property, that party shall be released from its indemnification in Section 11.b. above, for all actions or occurrences happening after such assignment or conveyance

**12. ENVIRONMENTAL INDEMNITY.**

The provisions of Section 11 above, except for Section 11.a., shall not apply to any environmental matters, which shall be governed exclusively by the following, subject to the limitations of Section 11 a. above.

a. "Environmental Claims" shall mean all Claims asserted by governmental bodies or other third parties for pollution or environmental damage of any kind, arising from operations on or ownership of the Property or ownership of the oil and gas leasehold interest, whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith, including but not limited to any Claims arising from Environmental Laws or relating to asbestos or to naturally occurring radioactive material. Environmental Claims shall not include the costs of any remediation undertaken voluntarily by any party, unless such remediation is performed under the imminent threat of a Claim by a governmental body or other third party;

b. "Environmental Laws" shall mean any laws, regulations, rules, ordinances, or order of any governmental authority(ies), which relate to or otherwise impose liability, obligation, or standards with respect to pollution or the protection of the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.), the Clean Water Act (33 U.S.C. §§ 466 et seq.), the Safe Drinking Water Act (14 U.S.C. §§

1401-1450), the Hazardous Material Transportation Act (49 U.S.C. §§ 1801 et seq.), the Clean Air Act, and the Toxic Substances Control Act (15 U.S.C. §§ 2601-2629); and

c      Environmental Indemnification. KMG shall protect, indemnify, and hold harmless Surface Owner, homeowners association and any lot owner who purchases a lot from Surface Owner from any Environmental Claims relating to the Property or oil and gas leasehold thereunder that arise out of KMG's ownership and operation of the Oil and Gas Operations Areas and its ownership and operation of its pipeline easement or rights-of-way on the Property. Surface Owner shall fully protect, defend, indemnify and hold harmless KMG from any and all Environmental Claims relating to the Property that arise out of Surface Owner's development of the Property.

### **13.    EXCLUSION FROM INDEMNITIES.**

The indemnities of the parties herein shall not cover or include any amounts which the indemnified party is actually reimbursed by any third party. The indemnities in this Agreement shall not relieve any party from any obligations to third parties.

### **14.    NOTICE OF CLAIM FOR INDEMNIFICATION.**

If a Claim is asserted against a party for which the other party would be liable under the provisions of Section 11 or 12 above, it is a condition precedent to the indemnifying party's obligations hereunder that the indemnified party give the indemnifying party written notice of such Claim setting forth all particulars of the Claim, as known by the indemnified party, including a copy of the Claim (if it is a written Claim). The indemnified party shall make a good faith effort to notify the indemnifying party within five days of receipt of a Claim and shall affect such notice in all events within such time as will allow the indemnifying party to defend against such Claim.

### **15.    REPRESENTATIONS.**

Each party represents that it has the full right and authority to enter into this Agreement. KMG does not represent that it has rights to settle matters for all of the mineral owners or any other lessees in the Property and this Agreement shall only apply to and bind the KMG leasehold interest in the property.

### **16.    SUCCESSORS.**

The terms, covenants, and conditions hereof shall be binding upon and shall inure to the benefit of the parties and their respective heirs, devisees, executors, administrators, successors and assigns; provided, as to KMG, successors and assigns shall be deemed to be limited to lessees under the oil and gas leases which KMG owns.

### **17.    TERM.**

This Agreement shall become effective when it is fully executed and shall remain in full force and effect until KMG's leasehold estate expires or is terminated, and KMG has plugged and abandoned all wells owned all or in part by KMG and complied with the requirements of all

applicable oil and gas leases pertaining to removal of equipment, reclamation, cleanup and all other applicable provisions of the leases and existing laws and regulations

**18. NOTICES.**

Any notice or other communication required or permitted under this Agreement shall be sufficient if deposited in U.S. Mail, postage prepaid, addressed to each of the following.

**If to KMG:**

Kerr McGee Oil & Gas Onshore LP  
1099 18<sup>th</sup> Street, Suite 1800  
Denver, Colorado 80202  
Attention: Director of Land Denver Basin

**If to Surface Owner:**

KCB, LLC  
14339 WCR 74  
Eaton, CO 80615.  
Email: [tbeanplatinum@aol.com](mailto:tbeanplatinum@aol.com)  
Phone. 970.590.5551

Ram Land Co LLC  
1409 Business Park Cir.  
Longmont, CO 80504  
Email: [mark@landpros.net](mailto:mark@landpros.net)  
Phone. 303.772 1164

Any party may, by written notice so delivered to the other parties, change the address or individual to which delivery shall thereafter be made

**19. RECORDING.**

This Agreement, any amendment hereto shall be recorded by KMG, which shall provide the other parties with a copy showing the recording information as soon as practicable thereafter.

**20. SURFACE DAMAGES.**

Surface Owner hereby waives all surface damage payments pursuant to any COGCC or local regulation, state statute, common law or prior agreement, for each and every well that is drilled, tank battery and emissions control device located on the Property within the Oil and Gas Operations Areas and also including but not limited to any access road, flowline, or pipeline constructed within the Easement KMG may provide a copy of this Agreement to the COGCC as evidence of this waiver

**21. ARBITRATION.**

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved by arbitration conducted in Denver, Colorado and shall be administered by the American Arbitration Association under its commercial rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof

**22. APPLICABLE LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws provisions

**23. ENTIRE AGREEMENT.**

This Agreement sets forth the entire understanding among the parties hereto regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement shall not be amended, except by written document signed by all parties.

**25. EXECUTION AND BINDING EFFECT**

This Agreement may be executed in any number of counterparts each of which shall be deemed an original instrument but all of which together shall constitute one and the same instrument, and shall be binding upon and inure to the benefit of the parties, and each of their respective heirs, executors, administrators, successors and assigns and is executed by the parties as of the Effective Date set forth above

**26. COMPLIANCE WITH REGULATION.**

Surface Owner expressly acknowledges that this Agreement satisfies KMG's obligation under COGCC rules 305 and 306 to consult in good faith with the Surface Owner regarding the proposed oil and gas operations. Surface Owner further expressly acknowledges that this Agreement shall be deemed to be specifically applicable to and to fully satisfy, the obligation of KMG to accommodate Surface Owner's use of the surface of the Property, existing or future, and waives any statutory or common law claims with respect thereto, except for actions to enforce this Agreement or obtain damages for its breach

The parties have executed this Agreement on the day and year first above written

**KERR-McGEE OIL & GAS ONSHORE LP**

By: Jane Ann Byroad  
Jane Ann Byroad  
Agent & Attorney-in-fact

**KCB, LLC**

By: \_\_\_\_\_

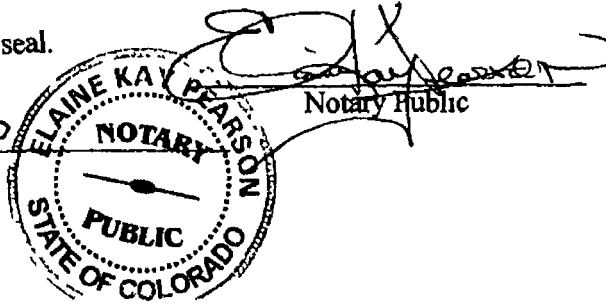
**ACKNOWLEDGMENTS**

STATE OF Colorado )  
~~TEXAS~~ ) ss  
COUNTY OF Denver )  
~~MONTGOMERY~~

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of March, 2009, by Jane Ann Byroad, as Agent and Attorney-in-Fact of Kerr-McGee Oil & Gas Onshore LP, on behalf of such corporation

Witness my hand and official seal.

My Commission Expires: 6-22-10

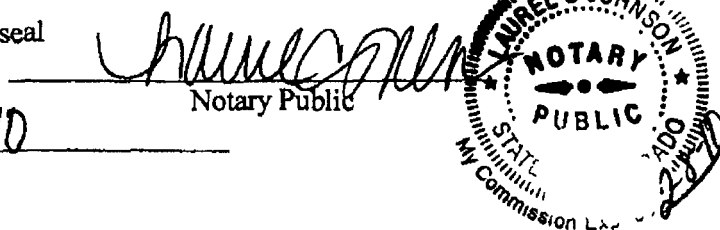


STATE OF COLORADO )  
COUNTY OF Weld ) ss.

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of April, 2009, by Todd Bean (KCB, LLC)

Witness my hand and official seal

My Commission Expires. 2-8-10



**Exhibit "A"**

**Legal Description of the Property**

Attached hereto and made a part of that certain Surface Use Agreement between KBC, LLC and Kerr McGee Oil & Gas Onshore LP, dated 25<sup>th</sup> day of March, 2009

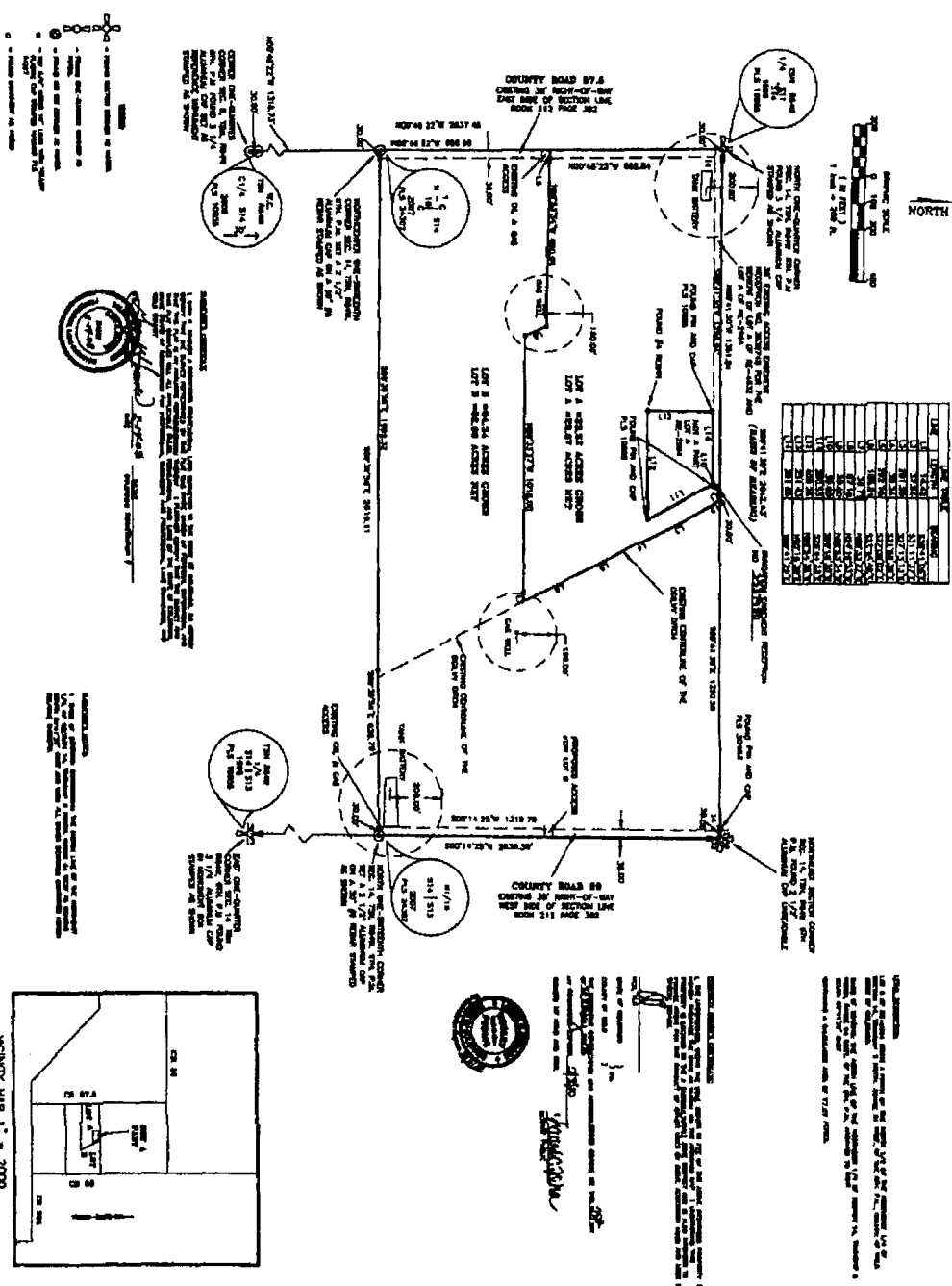
[Attached]

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APR 14 2009 RECORDED EXEMPTION NO. 0963-14-1 RE-4632

LOT B OF RE-2994 BEING A PART OF THE NORTH 1/2 OF THE NORTHEAST 1/4  
OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 64 WEST, OF THE 6TH P.M.,  
WELD COUNTY, COLORADO

COGCC



CLIENT KCB LLC  
14338 WCR 74  
RATON, CO 80615

HAMMER LAND SURVEYING, INC  
4350 MONROV 66  
LONGMONT CO 80504  
PH 970-535-5318

RECORDED EXEMPTION PLAT  
SECTION 14, TOWNSHIP 5 NORTH,  
RANGE 64 WEST 6TH P.M.

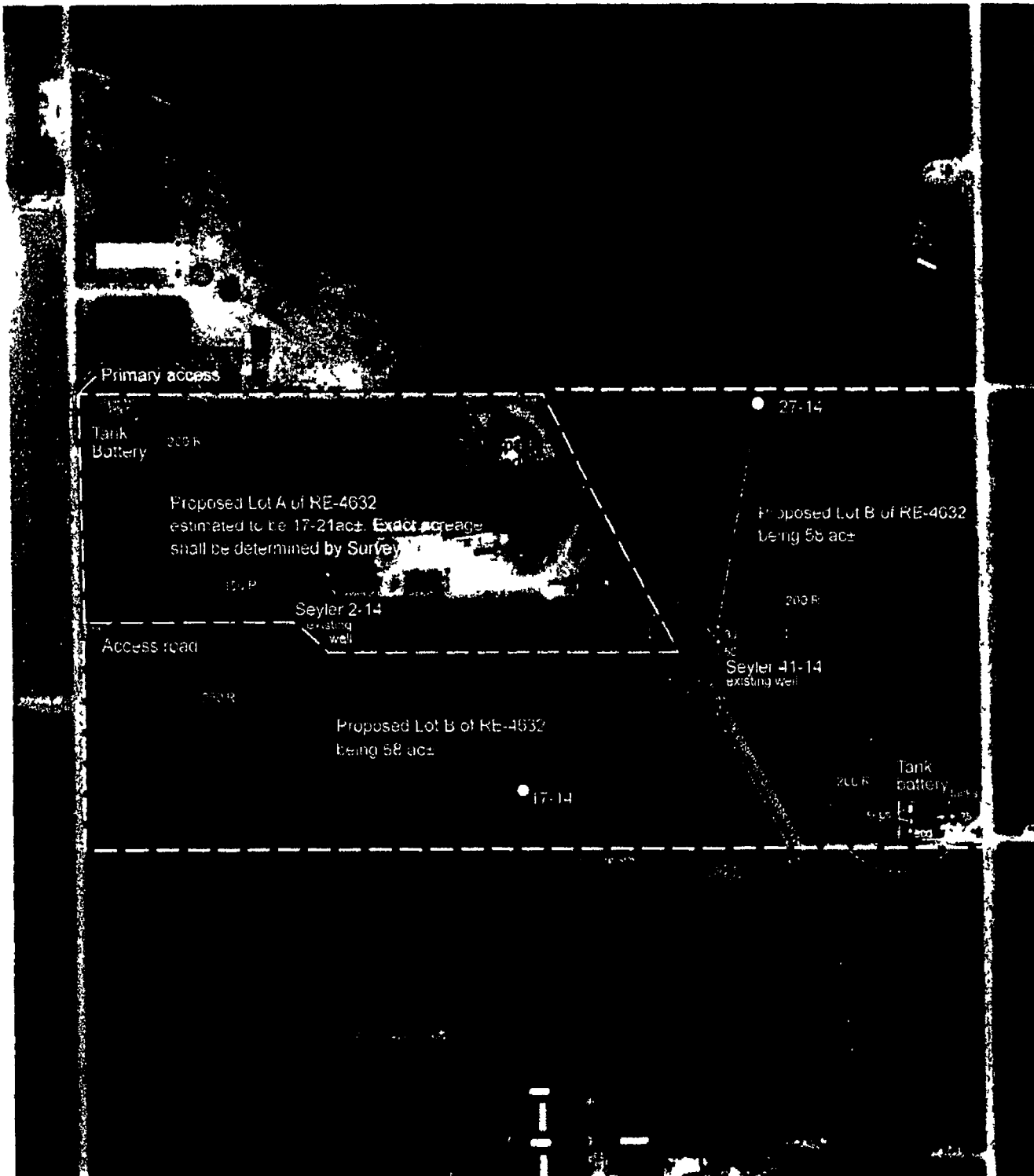
SECTION 14, TOWNSHIP 5 NORTH,  
RANGE 64 WEST 6TH P.M.  
DATE 8/6/07  
DJM07025

**Exhibit "B"**

**OIL AND GAS OPERATIONS AREAS AND PIPELINE EASEMENTS**

Attached hereto and made a part of that certain Surface Use Agreement between KBC, LLC and Kerr McGee Oil & Gas Onshore LP, dated 25<sup>th</sup> Day of MARCH, 2009.

[Attached]



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**RECEIVED**

APR 14 2009

**COGCC**

**Kerr McGee  
KCB**

N 1/2 NE 1/4 sec 14 T5N R64W, Weld County, Colorado

3/4/09

**Exhibit "C"**

**RIGHT OF WAY GRANT**

Attached hereto and made a part of that certain Surface Use Agreement between KBC, LLC and Kerr McGee Oil & Gas Onshore LP, dated 25<sup>th</sup> day of March, 2009.

[Attached]

**THIS RIGHT-OF-WAY GRANT** ("Grant) is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, from \_\_\_\_\_, whose address is \_\_\_\_\_ ("Grantor(s)") to KERR-MCGEE GATHERING LLC, a Colorado limited liability company, whose address is 1099 18th Street, Suite 1800, Denver, Colorado 80202 ("KMGG") The parties agree as follows

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s) hereby grant, convey and warrant unto KMGG, its successors and assigns, a perpetual right-of-way and easement to survey, construct, maintain, inspect, operate, repair, alter, replace, modify, change the size of, reconstruct, mark, monitor, abandon or remove, at KMGG's election, \_\_\_\_\_ pipeline(s) and all appurtenances, below or above ground, convenient for the transportation or transmission of oil, gas, petroleum products, water, hydrocarbons and any other substances, whether fluid, solid or gaseous, and any products, derivatives, combinations or mixtures of any of the foregoing, in, on, over, under, or through the lands situated in Weld County, State of Colorado, being described as follows.

**TOWNSHIP X NORTH, RANGE Y WEST, 6<sup>TH</sup> PM**  
Section Z Part of the /

The specific route and course of the right-of-way and easement conveyed hereby ("Right-of-Way Lands") are more particularly described on Exhibit "A" attached hereto and made a part hereof. The parties have agreed that the width of the Right-of-Way Lands is fifty feet (50') during construction, and subsequent to the activities described immediately above, the width of the Right-of-Way Lands will be thirty feet (30').

After the initial construction of the pipeline(s) KMGG may require, from time to time, temporary additional work space parallel and adjacent to the Right-of-Way Lands to survey, construct, maintain, inspect, operate, repair, alter, replace, modify, change the size of, reconstruct, mark, monitor, abandon or remove the pipeline(s) together with all appurtenances. Grantee agrees to negotiate in good faith with KMGG to allow KMGG the use of this temporary additional work space.

The Grantor(s) represent and warrant to KMGG that Grantor(s) are the sole owners in fee simple of the Right-of-Way Lands, subject to the burden of the Right-of-Way and have full right, power and authority to enter into this Grant.

The pipe constructed hereunder shall be placed at a depth of not less than 36 inches below the surface of the ground. Grantor agrees not to increase or decrease the surface elevation on the Right-of-Way Lands without KMGG's prior written permission. KMGG shall repair and/or restore any fence on or adjacent to the Right-of-Way Lands removed or severed by KMGG in the course of the operations provided for in this Grant to the condition such fence was in prior to the removal by KMGG. If necessary to prevent the escape of Grantor's livestock, KMGG shall construct temporary gates or fences in those areas affected by KMGG's operations as provided for in this Grant.

KMGG shall level and restore any lands affected by KMGG's operations that may have excessive settling and sufficiently compact the soil within a reasonable period of time after completion of construction to the condition that existed at the time immediately prior to the placement of KMGG's pipeline(s), to the extent reasonably practicable.

Grantor(s) agree not to build, create, construct or permit to be built, created or constructed, any obstruction, building, fence, reservoir, engineering works or other structures or improvements over, under, on or across the Right-of-Way Lands without the prior written consent of KMGG.

KMGG shall have all rights, privileges and benefits necessary or convenient for the full use and enjoyment of this Grant, including but not limited to, the right of ingress and egress over and across Grantor(s)' lands lying adjacent to the Right-of-Way Lands for any and all purposes necessary and incidental to exercising KMGG's rights hereunder.

KMGG shall be obligated to pay for, repair, replace or otherwise compensate Grantors for

This Grant cannot be modified, except by an instrument in writing signed by Grantor(s) and the authorized representatives of KMGG

The rights granted herein may be assigned in whole or in part, and the terms, conditions, and provisions of this Grant are a covenant running with the land and shall extend to and be binding upon the successors, and assigns of Grantor(s) and KMGG

KMGG shall record an original of this Right-of-Way Grant in the records of the County in which the Right-of-Way Lands are located. By recording this Right-of-Way Grant, KMGG shall be deemed to have accepted all of the terms and conditions hereof

This Grant may be executed in counterparts each of which shall be considered one and the same agreement.

IN WITNESS WHEREOF, the Grantor has executed and delivered this Right-of-Way Grant as of the date first above written

Grantor(s):

Grantor's Name, company name

By KCB, LLC by: [Signature]  
Title owner

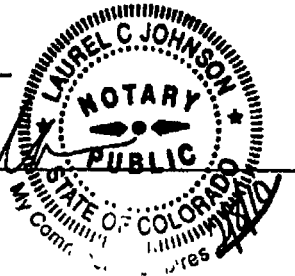
STATE OF COLORADO )  
COUNTY OF Weld )ss

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of April, 2009,  
by KCB, LLC by Todd Bear owner, on behalf of \_\_\_\_\_

Witness my hand and official Seal

My Commission Expires 2-8-10

[Signature]  
Notary Public



(SEAL)

**Exhibit "D"**

**KMG PIPELINE GUIDELINES**

Attached hereto and made a part of that certain Surface Use Agreement between KBC, LLC and  
Kerr McGee Oil & Gas Onshore LP, dated 25<sup>th</sup> day of March, 2009

[Attached]



## **General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC and Kerr - McGee Oil & Gas Onshore LP Pipelines and Related Facilities**

- The foreign utility should be advised that KMG maintains cathodic protection on its pipelines and facilities. The foreign utility must coordinate their cathodic protection system with KMG's. At the request of KMG, foreign utilities shall install (or allow to be installed) cathodic protection test leads at all crossings for the purposes of monitoring cathodic protection interference. The KMG CP technician and the foreign utility CP technician shall perform post construction CP interference testing. Interference issues shall be resolved by mutual agreement between foreign utility and KMG. All costs associated with the correction of cathodic protection interference issues on KMG pipelines as a result of the foreign utility crossing shall be borne by the foreign utility for a period of one year from date the foreign utility is put in service.
- The developer shall understand that KMG whether specifically required per federal law, or by company standard, will mark the routing of its underground facilities with aboveground pipeline markers and test leads and maintain those markers and test leads. Markers will be installed at every point the pipeline route changes direction and adequate markers will be installed on straight sections of pipeline to insure, in the sole opinion of KMG, the safety of the public, contractor, KMG personnel and KMG facilities.
- On all foreign utility crossings and / or encroachments, metallic foreign lines shall be coated with a suitable pipe coating for a distance of at least 10 feet on either side of the crossing.
- AC Electrical lines must be installed in conduit and properly insulated.
- On all foreign pipelines, DOT approved pipeline markers shall be installed so as to indicate the route of the foreign pipeline across the KMG ROW.
- No power poles, light standards, etc. shall be installed in the KMG easement without written approval by KMG.
- KMG installs above ground appurtenances at various locations that are used in the operation of its facilities. Kerr McGee will install protective enclosures at the above ground appurtenances to protect them from outside damage. The design and placement of these above ground appurtenances and protective enclosures is done at KMG's sole discretion, and may exceed any regulatory requirements.

### **Construction**

- If KMG will be relocating KMG facilities for any entity, grading in the new KMG ROW shall be +/- 6 inches before KMG will mobilize to complete the relocation. Final cover after the completion of the project will not be less than 48" nor more than 72". All cover that exceeds 72" or less than 48" will be approved in writing by KMG. Cover during all construction activities will NEVER be less than 36" unless approved in writing and a KMG representative is on site during the time cover is reduced.
- The entity requesting relocation shall survey top of pipe after installation but before backfill to determine proper final elevation of KMG facilities. The entity requesting relocation is solely responsible for the final depth of cover over the relocated KMG facility. Any deviation from cover requirements as outlined above will be corrected at the sole expense of the entity requesting relocation.
- Contractors shall be advised of KMG's requirements and be contractually obligated to comply.
- The continued integrity of KMG's pipelines and the safety of all individuals in the area of proposed work near KMG's facilities are of the utmost importance. Therefore, contractor must meet with KMG representatives prior to construction to provide and receive notification listings for appropriate area operations and emergency personnel. KMG's on-site representative will require discontinuation of any work that, in his or her opinion, endangers the operations or safety of personnel, pipelines or facilities.
- The Contractor must expose all KMG pipelines prior to crossing to determine the exact alignment and depth of the lines. A KMG representative must be present.
- The use of probing rods for pipeline locating shall be performed by KMG representatives only, to prevent unnecessary damage to the pipeline coating. A KMG representative shall do all line locating.
- Notification shall be given to KMG at least 72 hours before start of construction. A schedule of activities for the duration of the project must be made available at that time to facilitate the scheduling of KMG's work site representative. Any Contractor schedule changes shall be provided to KMG immediately.



## **General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC and Kerr - McGee Oil & Gas Onshore LP Pipelines and Related Facilities**

- Heavy equipment will not be allowed to operate directly over KMG pipelines or in KMG ROW unless written approval is obtained from KMG. Heavy equipment shall only be allowed to cross KMG pipelines at locations designated by KMG. Haul roads will be constructed at all crossings. The haul roads will be constructed using lightweight equipment. The existing depth of cover over the pipeline must be verified. Cover will be added such that a total of 8' of fill exists over the pipeline and extends a minimum of 10' on each side of the pipeline. Depth of cover will then taper as required for equipment access. Steel plates may be used for load dissipation only if approved in writing by KMG.
- Contractor shall comply with all precautionary measures required by KMG, at its sole discretion to protect its pipelines. When inclement weather exists, provisions must be made to compensate for soil displacement due to subsidence of tires.
- Excavating or grading which might result in erosion or which could render the KMG ROW inaccessible shall not be permitted unless the contractor agrees to restore the area to its original condition and provide protection to KMG's facility. At no time will cover be reduced to less than 36" without written approval by KMG and a KMG representative on site.
- A KMG representative shall be on-site to monitor any construction activities within twenty-five (25) feet of a KMG pipeline or aboveground appurtenance. The contractor shall not work within this distance without a KMG representative being on site. Contractor shall use extreme caution and take any appropriate measures to protect KMG facilities.
- Ripping is only allowed when the position of the pipe is known and not within ten (10) feet of KMG facility. KMG personnel must be present.
- Temporary support of any exposed KMG pipeline by Contractor may be necessary if required by KMG's on-site representative. Backfill below the exposed lines and 12" above the lines shall be replaced with sand or other selected material as approved by KMG's on-site representative and thoroughly compacted in 12" lifts to 95% of standard proctor dry density minimum or as approved by KMG's on-site representative. This is to adequately protect against stresses that may be caused by the settling of the pipeline.
- No blasting shall be allowed within 1000 feet of KMG's facilities unless blasting notification is given to KMG including complete Blasting Plan Data. A pre-blast meeting shall be conducted by the organization responsible for blasting.

KMG shall be indemnified and held harmless from any loss, cost of liability for personal injuries received, death caused or property damage suffered or sustained by any person resulting from any blasting operations undertaken within 500 feet of its facilities. The organization responsible for blasting shall be liable for any and all damages caused to KMG's facilities as a result of their activities whether or not KMG representatives are present. KMG shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given.

No blasting shall be allowed within 200 feet of KMG's facilities unless blasting notification is given to KMG a minimum of one week before blasting. The organization responsible for blasting must complete Blasting Plan Data. KMG shall review and analyze the blasting methods. A written blasting plan shall be provided by the organization responsible for blasting and agreed to in writing by KMG. A written emergency plan shall be provided by the organization responsible for blasting.

KMG shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given. A pre-blast meeting shall be conducted by the organization responsible for blasting.

- Any contact with any KMG facility, pipeline, valve set, etc. shall be reported immediately to KMG. If repairs to the pipe are necessary, they will be made and inspected before the section is re-coated and the line is back-filled.
- KMG personnel shall install all test leads on KMG facilities.

### **Local Kerr-McGee Gathering LLC Representation:**

Manager of Construction & Facilities Engineering:  
Facilities Engineer:  
Foreman 1:  
Foreman 1:

Kevin R. Osif, P.E.  
Joseph E. Sanchez, P.E.  
James Phillips  
Rick Noffsinger

Phone: 303 855 - 4307  
Phone: 303 855 - 4319  
Phone: 303 855 - 4343  
Phone: 303-855 - 4328



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