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SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT ("Agreement") is made and entered into this 25th day of October 2006, by and between MERIT ENERGY COMPANY, a Delaware corporation with an address of 13727 Noel Road, Suite 500, Dallas, TX 75240 ("Operator") and Donna M. Wailes, a single woman 45300 East 112th Avenue, Bennett, Colorado 80102 ("Surface Owner").

WHEREAS, Operator is the owner of certain oil and gas leasehold rights in, on and under the (the "Property"),

TOWNSHIP 2 SOUTH, RANGE 63 WEST, 6TH P.M.
Section 8: SE/4

This Surface Use Agreement is subject to that certain Oil and Gas Lease dated March 2, 1982 and recorded in the Adams County Clerk and Recorder's office at Book 2633, Page 285, on March 31, 1982.

WHEREAS, Surface Owner is the owner of the surface rights in and to the Property, and

WHEREAS, the Property is subject to the provisions of Rule 318 A of the rules and regulations of the Colorado Oil and Gas Conservation Commission ("COGCC") effective March 1, 2006, authorizing the drilling, completion and operation of "infill and boundary" wells in addition to the other wells authorized to be drilled from the COGCC designated drilling windows being 400-foot squares located in the center of each of the SE/4SE/4 and NW/4SE/4 above described, and

WHEREAS, Operator's leasehold rights include, among other things, the right of ingress and egress for the purposes of exploration, development, drilling, re-drilling, testing, completion, recompletion, re-entry, deepening, fracturing, refracturing, stimulation, reworking, production and maintenance operations associated with oil and gas wells and the associated flowlines and production facility to be located on the Property, and

WHEREAS, Operator has identified two locations ("Wellsite Areas") on the Property at which it desires to drill oil and gas wells (collectively the "Wells"). The Wells will be located at the approximate locations set forth below and, as used in this Agreement, the term "Wellsite Areas" shall encompass the area within a 200-foot radius of the actual wellbore of each Well. The Well or Wells to be drilled pursuant to this Agreement are described on the plat or plats attached hereto.

WHEREAS, Operator and Surface Owner desire to enter into an agreement regarding the Wells and the Wellsite Areas covering such subjects as well setbacks, the drilling of additional wells in the Wellsite Areas, flowline locations, production facility



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location and access road locations, all for the purpose of coordinating the development of the mineral rights and surface rights of the Property.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Surface Owner acknowledges, subject to the terms and conditions of this Agreement, that Operator, as the owner of oil and gas leasehold rights covering the Property, has the right to drill the Wells and to have uninterrupted access to the Wells, Wellsite Areas, flowlines and production facilities for the purposes of exploration, drilling, re-drilling, testing, development, completion, recompletion, re-entry, deepening, fracturing, refracturing, stimulation, reworking, production and maintenance operations.

2. Operator acknowledges, subject to the terms and conditions of this Agreement and the oil and gas lease or leases that cover the Property, that Surface Owner, as the surface owner of the Property, has the right to develop the surface of the Property.

3. Surface Owner and Operator agree that the locations of Wellsite Areas, Wells and Easements (as defined herein), flowlines, production facilities and access routes for the Wells have been agreed and will be located in accordance with that agreement. The stock tanks and the separators for the Wells will be constructed in a triangle configuration at distances required by the rules and regulations of the COGCC. Operator agrees to minimize the area used for the production facilities for the Wells in a manner consistent with good oil field practices. The parties acknowledge that the Wellsite Areas, Easements, flowlines, production facilities and access routes have not been surveyed. If the Property is developed in the future by Surface Owner, Surface Owner shall provide Operator with a thirty (30) foot wide exclusive (except through or across any public right-of-way) easements for the flowlines, said easements being fifteen (15) feet on each side of each flowline (the "Easements"). Surface Owner agrees that it will not construct any buildings, structures or improvements within seventy-five (75) feet on either side of each flowline. At the time Surface Owner files an application for development with any governing body having jurisdiction of the Property, the Easements will be surveyed by Surface Owner at Surface Owner's expense and provided to Operator in a recordable instrument reasonably acceptable to Surface Owner and Operator, or noted on any plat submitted to such governing body. Operator agrees to bury all flowlines to a depth of forty-eight (48) inches below the surface of the ground.

4. Surface Owner and Operator acknowledge that Operator has agreed to pay Surface Owner a sum of money per Well that has been agreed to as consideration from Operator to Surface Owner for the drilling of each of the Wells. Such payment shall be made prior to the commencement of drilling operations for each of the Wells. Should Operator fail to make the payment of the agreed upon consideration as set forth herein this Agreement will be of no force or effect. Surface Owner and Operator agree



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to negotiate in good faith for payments that may be made in connection with the drilling of additional wells on the Property within the Wellsite Areas pursuant to Rule 318 A of the COGCC rules, as amended from time to time, but the parties agree that if they are not able to reach agreement on such payments, that failure will not affect Operator or Surface Owner with respect to their respective rights in the Property. In consideration of such payments, Operator and Surface Owner agree as follows:

(a) By entering into this Agreement, Operator is not restricting, modifying, altering, or amending in any way its right of reasonable surface user of the Property. Specifically, Operator retains and maintains its right of access to the surface and sub-surface of the Property using routes as are provided for in this Agreement and such other routes as may be necessary to perform drilling and production enhancement operations on the Wells and other wells drilled on the Property (including but not limited to recompletions, deepening, re-drilling, refracturing, stimulation, workovers, pump installation, etc.), remediation and repair, maintenance and all other type of activities related to the Wells and other wells drilled on the Property including the eventual plugging and abandonment of the same. In the event of an emergency, Operator will have immediate unrestricted access to the Property.

(b) If, by reason of Operator's operations on the Property, there is damage in excess of the damage caused by the normal, reasonable use of the of the Surface of the Property by Operator for its oil and gas operations, Operator shall be liable to Surface Owner and its successors and assigns, as the case may be, for such damage, provided, however, Operator shall not be liable for any such damage caused by the negligence or willful misconduct of Surface Owner and his successors and assigns. In addition, Operator shall indemnify and hold harmless Surface Owner and its successors and assigns from all claims asserted against them by any third party, whether for bodily injury, property damage or otherwise, arising directly by reason of Operator's operations, if such claims are the result negligence on the part of Operator in the exploration, drilling, re-drilling, testing, development, completion, recompletion, reworking, deepening, re-entry, fracturing, refracturing, stimulation, production and maintenance operations on the Property, provided, however, Operator shall not be liable for such third party claims arising directly or indirectly from the negligence or willful misconduct of Surface Owner.

(c) Surface Owner shall have no liability for any release into the environment of oil, gas, produced water, or other substances utilized by Operator pursuant to its conduct of oil and gas operations on the Property, except as any such release that is caused by Surface Owner, or its tenants, licensees, invitees or agents. Operator shall hold Surface Owner harmless from, and indemnify Surface Owner against, any liability arising from any federal or state environmental law or regulation applicable to any release of hazardous materials or substances caused by Operator's conduct of oil and gas operations, or any other activities of Operator on the Property. Unless Surface Owner, or its



tenants, licensees, invitees or agents, engage in or assumes responsibility for the conduct of oil and gas operations on the Property, or otherwise causes any actual or threatened significant adverse environmental impact, Operator assumes the obligation as the "responsible party" under Section 34-60-124(7), Colorado Revised Statutes, to perform any mitigation ordered by the COGCC, or to perform any mitigation or remediation required by any other federal or state agency charged with enforcement of environmental laws or environmental regulations if such mitigation or remediation is related to or made necessary by Operator's oil and gas operations on the Property.

(d) At the conclusion of its operation on each of the Wells drilled on the Property (as determined at the sole discretion of Operator), Operator shall plug and abandon such wells and restore the applicable wellsite area and related flowline and access route location, in accordance with the then applicable laws, rules, regulations and standards of the COGCC, or the laws, rules, regulations and standards of any successor agency.

(e) As to all operations conducted on the Property pursuant to this Agreement and the lease or leases and except as provided in Paragraphs 4(b) and 4(d) hereof, Surface Owner, for itself, and its successors and assigns, does hereby release, relinquish and discharge Operator, its successors and assigns from all claims, demands, damages and causes of action, past, present and future that Surface Owner may have by reason of the occupancy of the Property by Surface Owner and all other damage or injury to the Property, the Wellsite Areas, Easements and access routes caused by Operator's oil and gas operations.

5. (a) Surface Owner agrees that it shall not plat any surface property lines or construct any buildings, structures or improvements within the Wellsite Areas or within a distance of 200-feet (or such greater distance as may be required by any governmental agency with jurisdiction of Property) the of any of the wellhead of any Well drilled on the Property. Surface Owner further understands and agrees that Operator will need full and unobstructed use of the Wellsite Areas for drilling, completion, recompletion, re-entry, refracturing, stimulation, reworking, deepening, re-drilling and other workover operations necessary for the on-going production operations.

(b) Surface Owner shall identify on proposed subdivision plats, special use applications, application for a preliminary plat or final plat or plan or any other designation for a surface development application used by a local jurisdiction, the location of the Wells, Wellsite Areas, Easements, access roads and production facilities. Surface Owner shall record a plat to reflect the foregoing in the office of the Clerk and Recorder of Adams County, Colorado after it is approved by the local jurisdiction.

(c) Surface Owner shall provide written notice to its successors and assigns notifying them of Operator's ongoing operation and use of the Wells, Wellsite Areas, Easements, access roads and production facilities.

(d) Surface Owner shall provide to Operator written notice at least thirty-(30)-days before each hearing on any application that affects the Property.

(e) The parties agree to grant and hereby grant a waiver to each other of any state and local setback regulations and other requirements that are inconsistent with this Agreement.

6. With the prior written consent of Operator, which consent will not be unreasonably withheld, Surface Owner may install and maintain ground cover, landscaping and watering systems ("Landscaping") within the Wellsite Areas at its own expense and risk, acknowledging that Operator's normal operation may from time to time disturb or destroy said installed Landscaping. Surface Owner hereby agrees to install and maintain said Landscaping in such a way as to not violate COGCC regulations or impede Operator's access and/or operations. Surface Owner hereby accepts all responsibility for cost of installation, repair and/or replacement of said Landscaping within the Wellsite Areas, and Operator shall not be responsible for damage to said Landscaping resulting from its future access or operations. Prior to commencing installation of the Landscaping, Surface Owner shall consult with and obtain written approval from Operator to ensure that there are no adverse impacts upon Operator's ability to perform future operations, which consent shall not be unreasonably withheld. Operator's consent to the installation of such Landscaping shall not constitute nor be construed as a waiver of Operator's rights pursuant to this Paragraph 6.

7. This Agreement constitutes written consent of Surface Owner for Operator to conduct such oil and gas operations on the Property, as it deems necessary or convenient to the development of its leasehold subject to the terms and conditions contained herein. This Agreement also constitutes Surface Owner's written acknowledgment that Operator has provided an appropriate Notice of Drilling in accordance with Rules 305.b (1) and 305.c of the COGCC and has properly engaged in Drilling Consultation with Surface Owner in accordance with COGCC Rule 306.a (1). This Agreement also constitutes Surface Owner's acknowledgment that Operator has complied with the well location requirements of COGCC Rule 318 A.

8. Operator shall keep Surface Owner's interest in the Property free and clear of all liens, claims and encumbrances, including but not limited to mechanic's liens, arising from Operator's oil and gas operations and other activities on the Property.

9. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been fully given, made and received only when personally delivered, received via facsimile that has been confirmed electronically, delivered by Federal Express or other nationally recognized courier service, or three (3) days after having been deposited in the United States mail,



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postage prepaid, return receipt requested. All notices requests, demands and other communications required or permitted hereunder shall be addressed as set forth below:

IF TO SURFACE OWNER:

Donna M. Wailes
45300 East 112th Avenue
Bennett, CO 80102

IF TO OPERATOR

Merit Energy Company
13727 Noel Road, Suite 500
Dallas, Texas 75240
ATTN: Fred N. Diem
TELEPHONE: 972-701-8377
FAX: 972-960-8420

WITH A COPY TO

Merit Energy Company
1221 40th Street
Evans, Colorado 80620
ATTN: Frank Holubec
TELEPHONE: 303-857-6766
FAX: 303-857-6789

10. This Agreement and all of the covenants herein shall be covenants running with the land.

11. Surface Owner and Operator agree that Operator may record an original of this Agreement or a Memorandum thereof in the real property records of Adams County, Colorado.

12. This Agreement contains the entire understanding between the parties hereto with respect to the transactions contemplated herein and such understanding shall not be modified except in writing signed by or on behalf of the parties hereto.

13. This Agreement will be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

14. If any provision of this Agreement or the application hereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of such provision to any other person or circumstances shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by applicable law.

15. This Agreement and the transactions contemplated hereby shall be construed in accordance with, and governed by, the laws of the State of Colorado, excluding any conflict of laws, rule or principle that might refer the governance or the construction hereof to another jurisdiction.

MERIT ENERGY COMPANY, INC.

By: [Signature]
Fred N. Diem
Vice President

SURFACE OWNER

By: [Signature]
Donna M. Wailes

STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

¹ The foregoing instrument was acknowledged before me this 20th day of March 2006, by Fred N. Diem as Vice President of Merit Energy Company, Inc., a Delaware corporation, on behalf of said corporation.

[SEAL]
My commission expires 10-08-08
STEPHANIE LOTT
Notary Public, State of Texas
Expires 10-08-08

[Signature]
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 7th day of March, 2006, by Donna M. Wailes, a single woman, as her voluntary act.

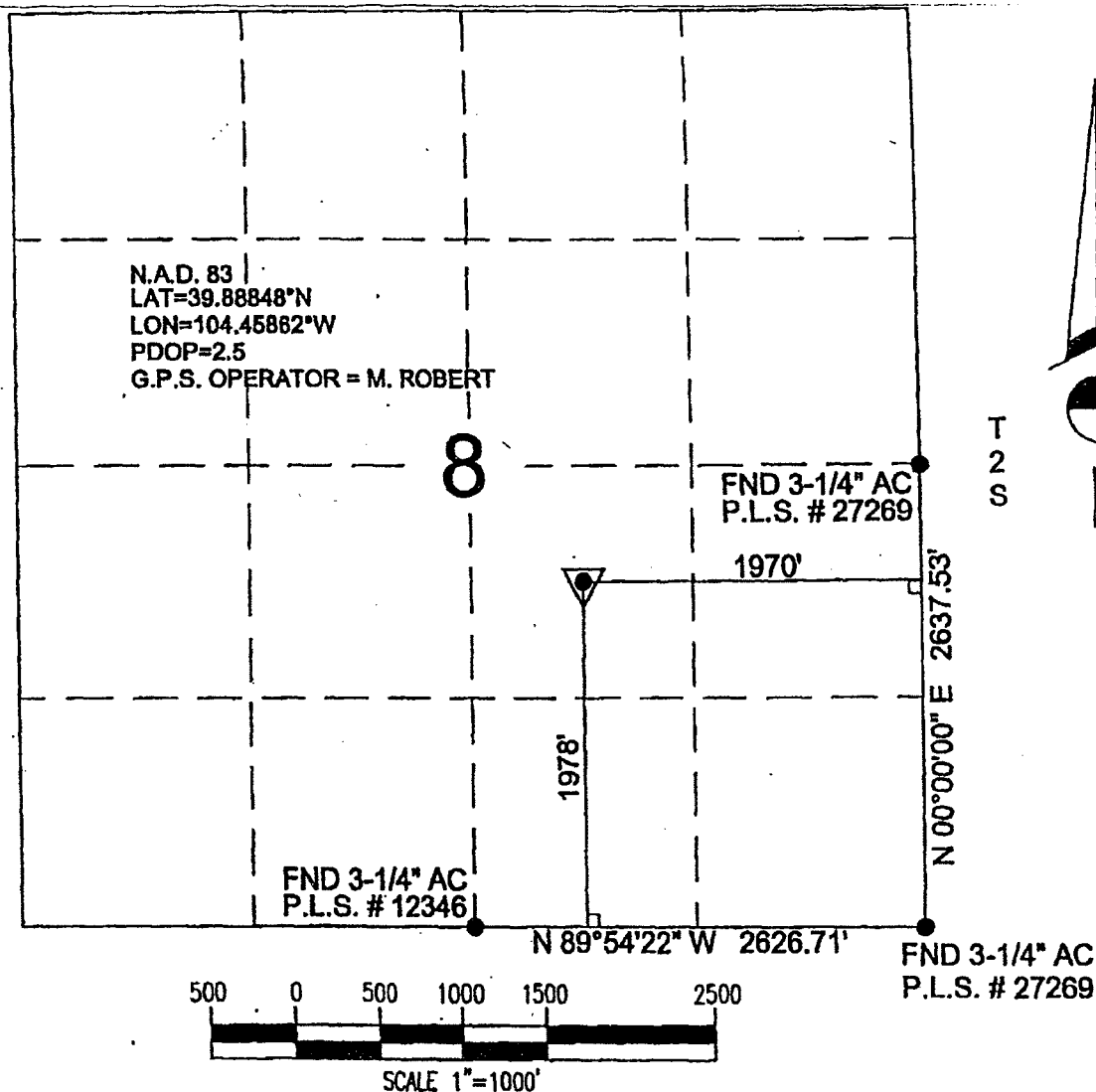
[SEAL]
My commission expires: 10-3-2010

BARBARA S. HILL
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 10/03/2010

[Signature]
Notary Public

Exhibit "B" attached hereto and made a part hereof a certain Surface Use Agreement dated October 25, 2006 by and between Merit Energy Company and Donna M. Wailes covering a parcel in the SE/4 of Section 8, Township 2 South, Range 63 West, 6th P.M.

BASIS OF BEARINGS: THE EAST LINE OF THE SE1/4 OF SECTION 8, AS SHOWN HEREON.



Power Surveying Co., Inc. of Frederick, Colorado has in accordance with a request from CASEY MORTON for MERIT ENERGY COMPANY determined the location of WAILES 33-8 to be 1978' FSL & 1970' FEL Section 8, Township 2 SOUTH Range 63 WEST of the Sixth Principal Meridian, ADAMS County, Colorado

LOCATION NOTES

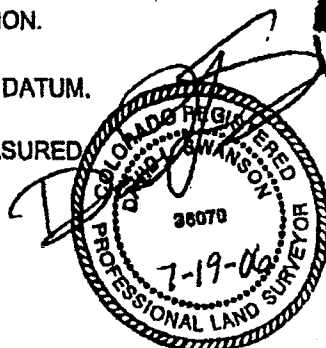
LOCATION FALLS IN: PLOWED FIELD
IMPROVEMENTS: NON WITHIN 200' OF LOCATION.

ELEVATION DETERMINED FROM NAVD 1988 DATUM.
GROUND ELEVATION = 5197'

DISTANCES AND BEARINGS ARE FIELD MEASURED
UNLESS OTHERWISE NOTED.

LEGEND

- SECTION CORNER (AS NOTED)
- ▼ PROPOSED WELL LOCATION
- ✕ BOTTOM HOLE LOCATION



POWER
Surveying Company, Inc
Established 1988

7800 MILLER DRIVE UNIT C
FREDERICK, COLORADO 80504
303-702-1617

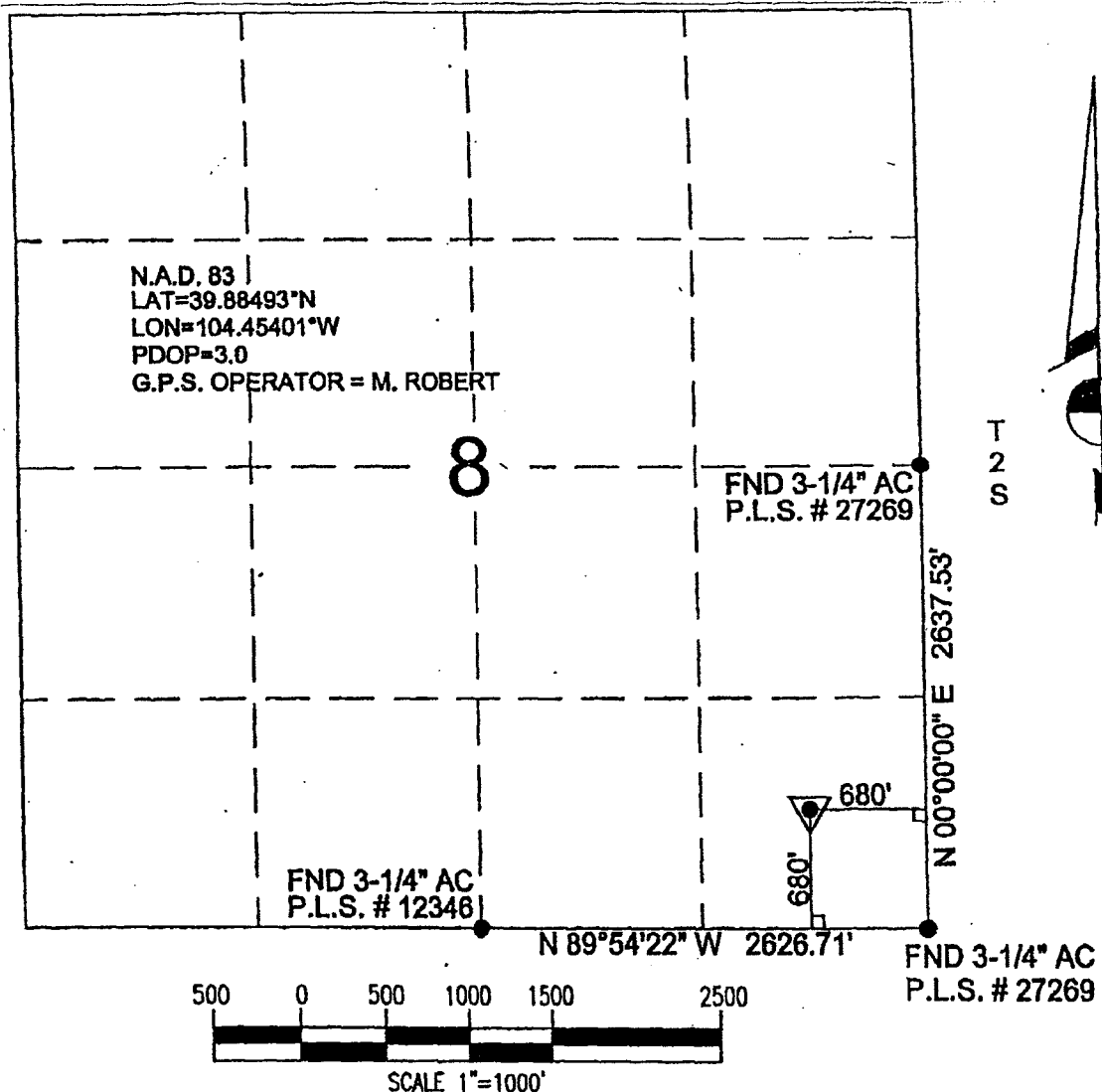
David L. Swanson
COLORADO P.L.S. #36070

FIELD DATE: 07-11-06 WO# 501-06-506
DATE OF COMPLETION: 07-12-08

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Exhibit "A" attached hereto and made a part hereof a certain Surface Use Agreement dated October 25, 2006 by and between Merit Energy Company and Donna M. Wailes covering a parcel in the SE/4 of Section 8, Township 2 South, Range 63 West, 6th P.M.

BASIS OF BEARINGS: THE EAST LINE OF THE SE/4 OF SECTION 8, AS SHOWN HEREON.



Power Surveying Co., Inc. of Frederick, Colorado has in accordance with a request from CASEY MORTON for MERIT ENERGY COMPANY determined the location of WAILES 44-8 to be 680' FSL & 680' FEL Section 8, Township 2 SOUTH Range 63 WEST of the Sixth Principal Meridian, ADAMS County, Colorado

LOCATION NOTES

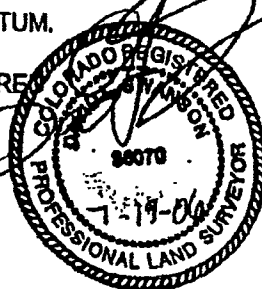
LOCATION FALLS IN: NATURAL GROUND
IMPROVEMENTS: NONE WITHIN 200' OF LOCATION.

ELEVATION DETERMINED FROM NAVD 1988 DATUM.
GROUND ELEVATION = 5210'

DISTANCES AND BEARINGS ARE FIELD MEASUREMENTS
UNLESS OTHERWISE NOTED.

LEGEND

- SECTION CORNER (AS NOTED)
- ▼ PROPOSED WELL LOCATION
- ⊗ BOTTOM HOLE LOCATION



POWER
Surveying Company, Inc.
Established 1941

7800 MILLER DRIVE UNIT C
FREDERICK, COLORADO 80504
303-702-1617

David L. Swanson
COLORADO P.L.S. #36070

FIELD DATE: 07-11-06 WO# 501-06-505
DATE OF COMPLETION: 07-12-06

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