

3467572 04/09/2007 02:04P Weld County, CO  
 1 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder

## SURFACE USE AGREEMENT

**THIS SURFACE USE AGREEMENT** (the "Agreement") is made and entered into this 20th day of March, 2007, by and among **NOBLE ENERGY PRODUCTION, INC.**, a Delaware corporation, **SOCO WATTENBERG CORPORATION**, a Delaware corporation (together referred to as "Noble"), 1625 Broadway, Suite 2000, Denver, Colorado 80202; **KERR-McGEE OIL & GAS ONSHORE LP**, a Delaware limited partnership ("Kerr-McGee"), 1999 Broadway, Suite 3700, Denver, Colorado 80202; **MERIT ENERGY COMPANY**, a Delaware corporation ("Merit"), 13727 Noel Road, Suite 500, Dallas, Texas 75240 (Noble, Merit and Kerr-McGee are sometimes referred to hereinafter individually as "Operator" and together as the "Operators") and **Duane E. Flack** and **Patricia Colleen Flack** (referred to hereinafter together as the "Developer").

### RECITALS

- A. Developer is the owner of the surface estate for approximately 320 acres, more or less, in that tract of land described as the West Half of Section 33, Township 5 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado (the "Property") as shown on Exhibit A attached hereto and made a part hereof.
- B. The mineral estate in and under the Property is presently subject to valid and subsisting oil and gas leases of record (the "Leases"), interests in which are owned in part by Noble, Merit and Kerr-McGee and others.
- C. The leasehold rights owned by Noble, Merit and Kerr-McGee include, among other things, the right of ingress and egress for the purposes of exploration, development, drilling, re-drilling, testing, completion, re-completion, re-entry, deepening, fracturing, re-fracturing, stimulation, reworking, production and maintenance operations associated with oil and gas wells and associated pipelines and production facilities ("Oil and Gas Operations") located on the Property.
- D. Noble currently operates ten wells on the Property, and Merit currently operates two wells on the Property, all as identified on Exhibit B ("Existing Wells") and flow lines, pipelines and production facilities associated with the Existing Wells, and Noble, Merit and Kerr-McGee all have rights to drill additional wells on the Property ("Future Wells")
- E. Developer desires to develop the Property for residential purposes.
- F. The Operators and Developer enter into this Agreement to provide for the coexistence and joint development of the surface estate and the oil and gas estate for the Property and to delineate the process with which the parties shall comply with respect to the development of the two estates.
- NOW THEREFORE**, in consideration of the covenants set forth herein and the mutual benefits to be derived by the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:



1. AREAS RESERVED FOR OIL AND GAS OPERATIONS.

1.1. Oil and Gas Operations. The Operators shall continue to have the right to undertake all Oil and Gas Operations for the Existing Wells located on the Property and all Future Wells to be drilled on the Property in the thirteen areas identified on Exhibit B as the "Oil and Gas Operations Areas." In order to provide for such and to the extent necessary, Developer hereby ratifies, consents to and grants to the Operators easements, to utilize the areas depicted and/or described on Exhibit B as the "Oil and Gas Operations Areas" for wellsites and the flowlines, pipeline easements and access roads for such operations, all as depicted on Exhibit B. The Oil and Gas Operations Areas shall include the surface areas reflected on Exhibit B.

1.2. Well Locations. The Operators 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 both the Property and lands other than the Property; provided that, such lands are validly pooled with all or any portion of the lands included in an oil and gas lease that includes all or any portion of the Property and so long as the well locations are permitted locations under the then applicable well spacing or well location regulations of the COGCC or exceptions to the regulations granted by the COGCC or its Director. As part of the consideration for this Agreement, Developer hereby consents to, waives its rights, and covenants that it will not protest or object to any exception location or application for an exception location by any Operator; provided that, the exception location request or application is consistent with this Agreement.

1.3. Associated Equipment within Oil and Gas Operations Areas. The Operators shall also have the right to locate, relocate, build, repair and maintain tanks, separators, dehydrators, compressors and all other associated oil and gas drilling and production equipment and facilities within the Oil and Gas Operations Areas.

1.4. Production Facility Locations. The Operators also have the right to locate, relocate, build, repair and maintain tanks, separators, dehydrators, and emissions burners and other equipment necessary, appropriate or convenient for the operation and production of the Wells within the areas depicted on Exhibit B as the Production Facility Locations; provided, that, except for the compressors that are currently located within the Production Facility Locations, additional compressors shall not be installed within the Production Facility Locations without the prior written consent of the Developer.

1.5. Limitation on Use of the Property. Except for the Oil and Gas Operations Areas, Production Facility Locations, pipeline easements and access roads as provided herein, the Operators shall not use or occupy the surface of the Property, except in the event of an emergency, or for necessary incidental and temporary activities.

1.6. Waiver of Surface Damages Payments. In consideration of the agreement of the Operators to limit their use of the Property as provided herein, the Operators shall not be obligated to pay, and Developer hereby waives any right to receive any and all surface damage payments and other such payments for the use of the Property or portions thereof, pursuant to any current or future COGCC or local regulation, state statute, common law or oil and gas lease or prior agreement for each and every well and related wellsite that is or will be drilled and located within the Oil and Gas Operations Areas and for associated oil and gas equipment and facilities to be located within the Oil and Gas Operations Areas and Production Facility Locations and for flowlines, access routes and pipeline easements provided for herein; provided,



however, nothing in this section 1.6 will relieve the Operators from their obligations to comply with this Agreement.

1.7. Exclusive to Oil and Gas Operations. Developer shall not locate any temporary or permanent buildings, structures or any improvements (including streets, sidewalks, curbs and gutters, detention or retention ponds, irrigation systems, sewage or drainage systems or pathways) or any landscaping of any kind within the Oil and Gas Operations Areas, Production Facility Locations or the pipeline easements, except as otherwise specifically depicted on Exhibit B without the prior written consent of the applicable Operators. Developer shall not materially alter or modify the existing grade within the Oil and Gas Operations Areas, Production Facility Locations or pipeline easements. Except as otherwise depicted on Exhibit B, the Oil and Gas Operations Areas, Production Facility Locations and pipeline easements shall be for the exclusive use of oil and gas operations and production and for the location of oil and gas wells and associated oil field drilling and production equipment.

1.8 Waiver of Certain Requirements. Developer waives all setback requirements in Colorado Oil and Gas Conservation Commission ("COGCC") Rule 603, or any successor rule or amendment to the COGCC setback rules, and 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 the Operators to explore for and produce the oil and gas in accordance with this Agreement. Developer understands that the Operators may cite the waiver in this Section 1.8 in order to obtain a location requirement exception or variance under COGCC rules or from a local jurisdiction. Developer also agrees that it will not object in any forum to the use by the Operators of the surface of the Property consistent with this Agreement and that it will also provide the Operators with whatever support in writing they may reasonably require to obtain permits from the COGCC or any local jurisdiction.

1.9. Twinned or Multiple Wellheads. Merit intends to place two wellheads in one Oil and Gas Operations Area as shown on Exhibit B. In Oil and Gas Operations Areas where twinned or multiple wells are to be located, Developer shall provide a 225-foot temporary setback around such wells where no permanent buildings or other structure shall be constructed or located during the times that wells are being drilled within the Oil and Gas Operations Area. Following drilling and completion operations, the setback around the wellhead shall be 150 feet.

## 2. PIPELINES AND FLOWLINES AND PIPELINE RELOCATIONS.

2.1 The Operators shall have the right to operate and maintain those pipelines that are currently located on the Property at the locations depicted and/or described on Exhibit B and referred to hereinafter as the "Existing Pipelines."

2.2. The Operators shall construct new pipelines within the locations identified on Exhibit B and hereinafter referred to as the "Pipeline Easements."

2.3 Current development plans for the Property anticipate the relocation of certain Existing Pipelines owned or operated by the Operators on the Property, specifically including Merit and Noble ("Existing Pipelines"), to the locations identified on Exhibit B as the Pipeline Easements. The applicable Operator and Developer shall abandon some or all of the Existing Pipelines, as the parties may agree, and install and construct future pipelines with casing sleeves



and risers within the Pipeline Easements, all in accordance with the following terms and conditions:

2.3.1 Construction of Pipeline. Developer shall complete the field staking for the installation of the future pipelines in the new alignment and at the required depth as provided below after giving written notice to the applicable Operator. The field staking will consist of a marker every thirty (30) feet, marking the desired depth of the future pipeline. Casing sleeves shall be installed under roadways, curbs, gutters and sidewalks constructed with impermeable materials as identified on Exhibit B. The sleeved segments of the future pipeline may have casing risers at one end of the sleeved segments. Within sixty (60) days after the Operator receives written notice from Developer that field staking is complete, the Operator will relocate the Pipeline along the routes staked by Developer in the Pipeline Easements depicted on Exhibit B. Pipelines shall be installed to a depth sufficient to result in forty-eight (48) inches below the proposed finished grade of the surface and a depth no greater than five (5) feet below the grade existing at the time of installation. In the event the field staking requires an Operator to install the Pipeline or remove abandoned Pipeline at depths greater than five (5) feet, Developer will pay the Operator all actual costs incurred in construction and installation of pipelines and flowlines that are moved for the convenience of Developer; provided that, the applicable Operator will provide assurance that the cost to Developer will not exceed the cost for such work had the work been performed by Developer.

2.3.2. Removal of Abandoned Pipeline. Upon the completion of construction and installation of the new Pipelines, the applicable Operator will remove those portions of the Existing Pipelines that were replaced and abandoned.

2.3.3 Line Crossings. If the surface development of the Property by Developer requires that Pipelines that an Operator constructs on the Property and which have been relocated be crossed by a sewer line, water line or other utility, Developer shall notify the applicable Operator providing: i) the date and time of the line crossing (the "Commencement Time"); and ii) when the line crossing has been completed (the "Completion Time"). If the Operator suspends production through the Pipeline during all or any part of the time that crossing takes place, Developer shall pay the applicable Operator for each calendar day or part thereof between the Commencement Time and the Completion Time, the sum of \$500.00 per well per day. Such payments shall be compensation to the Operator for lost or delayed production, and Developer shall make the payment to the Operator within fifteen (15) days from the date it receives an invoice from the Operator. Such payments shall be in addition to payments to be made by Developer for lost and/or delayed production during the time that an Operator relocates a Pipeline. Developer shall maintain a distance of a minimum two (2) feet above or below the Pipeline at all crossings.

2.3.4. Relocation of Production Facility Area. The applicable Operators shall relocate certain production facilities to the locations identified on Exhibit B. In such event, and as part of the consideration for the payment in section 4, Developer will pay to the Operator the actual costs of such relocation, estimates of which amounts are set forth in section 4.

2.4. Width of Easements. Pipeline easements shall be fifty (50) feet in width during construction, installation and relocation activities and reduced to thirty (30) feet in width



following construction for operations, maintenance and transportation activities. Flowline easements shall be thirty (30) feet in width for all operations.

2.5. Non-Exclusive Easements. The Operators agree that Pipeline Easements are non-exclusive and further agree that they will not object to the concurrent use of the Pipeline Easements by other oil and gas operators and utilities as Developer may grant from time to time, so long as the persons or entities with which the Pipeline Easements are shared comply with the pipeline guidelines of Kerr-McGee, attached as Exhibit C; provided further, however, Developer shall not permit to be placed, nor shall it place, any utility or structure within ten feet (10') horizontally or two feet (2') vertically of any pipeline of an Operator without the express written consent of the Operator.

2.6. Sleeving Within Roads and Adjacent to Other Surface Uses. If Developer proposes to construct roads that will cross over Existing Pipelines or future pipelines that are then installed on the Property, Developer shall pay the applicable Operator the reasonable costs based on then current industry standards to have the Operator sleeve the portions of the pipelines that are to be crossed by such roads. In addition, Developer shall pay the applicable Operator such reasonable costs to sleeve the portions of the pipelines: i) that are within thirty (30) feet of a street, sidewalk, running path, equestrian path, curb or gutter; and ii) that are within sixty (60) feet of a dwelling or other structure intended for human occupancy or use. In all cases, such payments are to be made by Developer in advance of the work. Developer shall not install the portion of the road that crosses a pipeline or construct a street, sidewalk, running path, equestrian path, curb, gutter or dwelling or other structure until the pipeline has been sleeved.

2.7. Cover Over Pipelines. The Operators shall bury flowlines and pipelines at a depth of approximately forty-eight inches (48') from the surface. Developer shall maintain a minimum of forty-eight inches (48') and not more than seventy-two inches (72") of cover over pipelines and flowlines during Developer's operations on the Property.

3. CONSTRUCTION COORDINATION. Upon commencement by an Operator of construction operations pursuant to section 2 above, Developer shall cease all operations on the Property that would be likely to interfere with the Operator's obligations and operations pursuant to this Agreement. In the event Developer fails to cease operations and that as a proximate cause thereof, standby, shutdown or re-mobilization charges are incurred by the Operator, Developer shall be liable for and pay such additional charges within fifteen (15) days of receipt of an invoice from the applicable Operator. Developer represents that the ground that is within the Oil and Gas Operations Areas and Production Facility Locations where there are no wells or facilities and also 100 feet from an Existing Well or Future Well is at a grade of 10:1 are flatter, and, in the event that the ground is not at the stated level, Developer shall grade the ground to the designated level prior to the commencement by the Operator of Oil and Gas Operations within the Oil and Gas Operations Areas or Production Facility Locations.

4. CONSTRUCTION, RELOCATION COSTS. Thirty (30) Days prior to the date Developer desires an Operator to relocate Pipelines or production facilities within a Production Facility Location, Developer shall pay the Operator the actual costs of such relocation, estimated to be equal to the sum of Forty Thousand and Five Hundred Dollars (\$40,500.00) per production facilities area containing 1500' of pipeline for relocation and installation, as payment in full for costs for the construction and relocation operations described in section 2 above, including land



consulting fees and expenses, and compensation for lost and/or delayed production. Such payment is referred to herein as the "Relocation Costs." In the event an Operator is precluded by the Developer from commencing operations within ninety (90) days from the date that this Agreement is executed, the Operator may recalculate Relocation Costs based on the then current actual costs of the operations, and Developer shall be liable for and pay the additional costs.

5. COMPLIANCE WITH REGULATIONS.

The Operators shall conduct their operations in accordance with COGCC rules and regulations and valid and applicable regulations and ordinances of governmental authorities; provided, however, nothing in this Agreement creates a private right of action under any state statute or state or local rule or regulation, including the regulations of the COGCC and the provisions of the Colorado Oil and Gas Conservation Act of C.R.S. 34-60-101 et seq.

6. ACCESS.

6.1 Developer understands and acknowledges that the Operators shall continue to have the right to use the access routes that they are currently using to access the Oil and Gas Operations Areas that include Existing Wells and the Production Facility Locations until such time as Developer constructs the access roads to the Oil and Gas Operations Areas and Production Facility Locations as identified on Exhibit B.

6.2 During Developer's development of the surface of the Property and thereafter, Developer shall at all times provide the Operators with continuous, reasonable access to the Oil and Gas Operations Areas, Production Facility Locations and Pipeline Easements; provided, however, access routes may change from time to time as surface development progresses

6.2 Developer anticipates that it will install replacement access roads at the locations described on Exhibit B as part of the development of the surface for the Property. Developer shall construct such roads to a width of thirty feet (30') ("Paved Access Roads") and to withstand the weight of 104,000 pounds and 26,000 pounds per axle.

6.3 At such time as Developer constructs the Paved Access Roads, Developer shall keep the portions of the Paved Access Roads that are jointly used by the Operators and the Developer in good condition and repair until such roads are dedicated to a local jurisdiction. No party shall unreasonably interfere with the use by the other of an access road.

7. FENCES AND GATES AND IMPACT MITIGATION.

7.1 The Operators shall install and maintain fences, gates and locks reasonably necessary for the security of the Wells within the Oil and Gas Operations Areas and the production facilities within the Production Facility Locations as are required by the COGCC. Such fences, gates and locks shall be installed and maintained at the expense of the Operators and to be of a type and quality customarily used by the Operators for such purpose.

7.2 Developer shall bear all costs to install such noise and visual impact mitigation measures it desires or the local jurisdiction requires at or around the Oil and Gas Operations Areas and Production Facility Locations where existing wells and production facilities are currently located that are in excess of or in addition to those measures that are required by



COGCC regulations for areas that are not high density; provided, however, the operator of the well within the particular Oil and Gas Operations Area or Production Facility Location shall have reasonable discretion to veto or protest the types and locations of impact mitigation measures in order to allow for safe oil and gas operations.

8. **NOTICE OF FUTURE OPERATIONS.** The Operators shall provide prior written notice to Developer in advance of drilling and production operations within the Oil and Gas Operations Areas in accordance with COGCC rules and regulations; provided, however, the Operators shall have immediate access in the event of an emergency.

9. **NOTICES TO HOMEOWNERS AND BUILDERS.**

Developer shall provide all persons and entities which purchase all or a portion of the Property from Developer that is within 350 feet from an Oil and Gas Operations Area or Production Facility Location with a plat or map that shows the locations of the Oil and Gas Operations Areas, Production Facility Locations, Pipeline Easements and access roads. In addition, Developer shall provide notice to all builders, homeowners, home owner associations and other buyers of the Property from Developer that:

9.1 there will be ongoing Oil and Gas Operations on the Property within the Oil and Gas Operations Areas, Production Facility Locations and Pipeline Easements;

9.2 heavy equipment may be used by the Operators from time to time for oil and gas drilling and production operations and such operations may be conducted on a 24 hour basis;

9.3 purchasers of all or a portion of the Property, including homeowners associations and buyers of individual lots or homes, as successors in interest to Developer and/or the Homestead Metropolitan District, will be acquiring a proportionate interest in Developer's rights and obligations under this Agreement and assuming the obligations undertaken by Developer pursuant to this Agreement, including, but not limited to, those covenants, waivers and consents: i) prohibiting the location of any temporary or permanent building, structure or other improvement within the Oil and Gas Operations Areas, Production Facility Locations, and Pipeline Easements; ii) waiving objections to the drilling of wells, construction of facilities and the conduct of oil and gas operations on the Property consistent with this Agreement; iii) waiving surface damage payments; iv) waiving objections to the setback requirements under the rules and regulations of the COGCC or any local jurisdiction; and v) granting the easements described in this Agreement.

10. **NOTICE OF HEARINGS.**

Developer shall provide the Operators with written notice not less than thirty (30) days before each hearing for consideration of a plat application or other land use application for the Property or portions of the Property to be held before a local jurisdiction.

11. **PRELIMINARY AND FINAL PLATS.** The final plat prepared by the Developer as part of the subdivision approval process for the Property shall include the Oil and Gas Operations Areas, Production Facility Locations, Pipeline Easements and access roads as depicted on the attached Exhibit B. Within fifteen (15) days of approval by the Town of Milliken of a final plat, Developer shall record a copy of the final plat in the real property records of Weld County, Colorado.

12. **FUTURE OPERATIONS.** The Operators shall make all reasonable efforts to pursue oil and gas drilling operations in a diligent manner so as to minimize the total time period on location and to avoid rig relocations or startup delays during the course of drilling. Developer waives and shall not assert any right to require that wellhead or production equipment be located in conformance with setback requirements different from those agreed to in this Agreement (including but not limited to those concerning any "high density" rules of the COGCC and of any local jurisdiction).

13. **GOVERNMENTAL PROCEEDINGS.**

13.1 Developer agrees that it will not directly or indirectly oppose or encourage opposition to the use by the Operators of the surface of the Property consistent with this Agreement and hereby waives any such right to object. Developer further agrees that it will provide such other written approvals and waivers that are requested by an Operator consistent with this Agreement, including, but not limited to, all approvals and waivers to drill a well or to conduct oil and gas operations on the Property because of any rule or regulation, including any local ordinance and regulations of the COGCC, and including, for example, waivers to state and local setback requirements from a surface property line or for an exception location. Developer further waives any rights it has to require or request a surface inspection for wells proposed to be drilled on the Property for the purpose of requesting that conditions be attached to a permit to drill the well. Developer further consents to the location of multiple wells within an Oil and Gas Operations Area that are greater or less than fifty feet apart so long as all such wells are located within the Oil and Gas Operations Area; provided that, the position of the Operators in such proceedings is in accordance with this Agreement.

13.2 The Operators shall not directly or indirectly oppose or encourage opposition to Developer in any agency, administrative, or other governing body proceedings, relating to Developer's operations on and development of the Property, including residential and associated development; provided that, Developer's position in such proceedings is in accordance with this Agreement.

14. **INDIVIDUAL LIABILITY OF OPERATORS.** Nothing in this Agreement is intended to create a cause of action by any Operator against any other Operator or to enlarge or diminish any right or interest created by any agreement or lease or assignment of lease between or among the Operators. Nothing in this Agreement creates any leasehold rights or gives any mineral rights to an Operator where none exists. The liability of the Operators to perform any obligation hereunder or to comply with any agreement included herein or with any state or local rule or regulation is individual and several and not joint or collective. This Agreement does not create a joint venture or partnership between or among the Operators. Any obligation under this Agreement shall be separate and based on the Operator's individual ownership under the Property.

15. **REPRESENTATIONS.** Each party represents that it has the full right and authority to enter into this Agreement, and Developer specifically confirms its capacity to validly execute the rights of way and easements provided for herein. Each Operator represents that it owns certain oil and gas leasehold interests for the Property or portions thereof. None of Kerr-McGee, Merit or Noble represents, and each specifically asserts, that it does not have the right to bind any other oil and gas leasehold interest owner, mineral owner, lessee or assignee for the Property.

16. **SUCCESSORS AND ASSIGNS.** 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. This Agreement and all of the covenants herein shall be covenants running with the land.

17. **NOTICES.** Any notice or other communication required or permitted under this Agreement shall be given in writing either by: i) personal delivery; ii) expedited delivery service with proof of delivery; iii) United States Mail, postage prepaid, and registered or certified mail with return receipt requested; or iv) prepaid telecopy or fax, the receipt of which shall be acknowledged, addressed as follows:

**If to Noble or SOCO:**

Noble Energy Production, Inc.  
1625 Broadway, Suite 2000  
Denver, Colorado 80202  
Attention: Land Department  
FAX (303) 595-7410

  
3467572 04/09/2007 02:04P Weld County, CO  
9 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder

**If to Kerr-McGee:**

Kerr-McGee Oil & Gas Onshore LP  
1999 Broadway, Suite 3700  
Denver, Colorado 80202

**If to Merit:**

Merit Energy Company  
13727 Noel Road, Suite 500  
Dallas, Texas 75240

**If to Developer:**

Duane Flack  
5628 West 19<sup>th</sup> Street  
Greeley, CO 80634  
Telephone: 970-330-3288 and a copy to  
Witwer, Oldenburg, Barry & Johnson, LLP  
Attorneys at Law  
822 7<sup>th</sup> Street, Suite 760  
Greeley, CO 80631

Any party may, by written notice so delivered to the other party, change the address, fax number or individual to whom delivery shall thereafter be made.

18. **RECORDING.** Within fifteen (15) days of the Effective Date, Developer shall record a copy of this Agreement in the real property records of Weld County, Colorado. Developer shall provide the Operators with a copy thereof showing the recording information as soon as practicable thereafter.

19. **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.



20. **ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding among the parties 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.
21. **HEADINGS.** The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.
22. **CONSTRUCTION.** The parties have participated jointly in the negotiating and drafting of this Agreement. In the event ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including, without limitation.
23. **NON-WAIVER.** Waiver by either party or of the failure of any party to insist upon the strict performance of any provision of this Agreement shall not constitute a waiver of the right or prevent any such party from requiring the strict performance of any provision in the future.
24. **SEVERABILITY.** Any covenant, condition or provision herein contained that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Agreement, but such deletion shall in no way affect any other covenant, condition or provision herein contained so long as such deletion does not materially prejudice a party in its rights and obligations contained in valid covenants, conditions or provisions. In the event that any part of this Agreement would otherwise be unenforceable or in conflict with applicable laws due to the term or period for which such part is in effect, the term or period for which such part of this Agreement shall be in effect shall be limited to the longest period allowable which does not cause such part to be unenforceable or in conflict with applicable laws.
25. **FORCE MAJEURE.** In the event any party is rendered unable, by an event of Force Majeure (defined below) to perform, wholly or in part, any obligation set forth in this Agreement, other than the obligation to pay money, then the performance by the affected party will be suspended during the continuance of such event of Force Majeure. The party experiencing an event of Force Majeure will provide reasonable notice to the other party as soon as possible with all reasonable dispatch. As used herein, the term "Force Majeure" shall mean any act of God, acts of the public enemy, wars, blockages, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, severe weather, floods, washouts, arrests and restraints of the federal, state or local government, civil disturbances, explosions, breakage or accidents to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, delay in securing environmental approvals, the inability to obtain necessary supplies, material, equipment, machinery or labor and any other causes, whether of the kind herein enumerated or otherwise not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.
26. **NO JOINT VENTURE.** This Agreement is not intended to, nor shall it be interpreted to create a joint venture, partnership or any other relationship between or among any of the parties.



3467572 04/09/2007 02:04P Weld County, CO  
11 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder

27. **EFFECTIVE DATE.** This Agreement shall become effective (the "Effective Date") upon the execution of this Agreement by all parties hereto.

28. **COUNTERPARTS.** This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same instrument.

The parties have executed this Agreement on the dates set forth in the acknowledgements, but to be effective on the date identified in section 27.

**NOBLE ENERGY PRODUCTION, INC.**

*M* By: Charles M. Countryman *CC*  
Charles M. Countryman  
Attorney-In-Fact *ica*

**SOCO WATTENBERG CORPORATION**

*M* By: Charles M. Countryman *CC*  
Charles M. Countryman  
Attorney-In-Fact *ica*

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**MERIT ENERGY COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**DEVELOPER**

By: \_\_\_\_\_  
Duane E. Flack

By: \_\_\_\_\_  
Patricia Colleen Flack



3467572 04/09/2007 02:04P Weld County, CO  
12 of 24 R 121.00 D O.O Steve Moreno Clerk & Recorder

ACKNOWLEDGMENTS

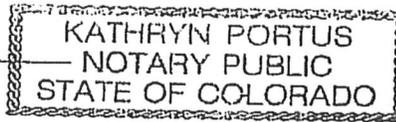
STATE OF COLORADO )  
 ) ss.  
CITY & COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of April, 2007, by Charles M. Countryman, Attorney-In-Fact for Noble Energy Production, Inc., a Delaware corporation, on behalf of that corporation.

Witness my hand and official seal.

Kathryn Portus  
Notary Public

My commission expires: \_\_\_\_\_



MY COMMISSION EXPIRES 2/9/2009

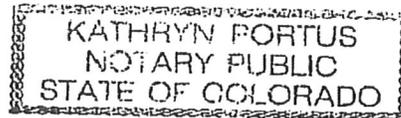
STATE OF COLORADO )  
 ) ss.  
CITY & COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of April, 2007, by Charles M. Countryman, Attorney-In-Fact for SOCO Wattenberg Corporation, a Delaware corporation, on behalf of that corporation.

Witness my hand and official seal.

Kathryn Portus  
Notary Public

My commission expires: \_\_\_\_\_



MY COMMISSION EXPIRES 2/9/2009

STATE OF COLORADO )  
 ) ss.  
CITY & COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, Attorney-In-Fact for Kerr-McGee Oil & Gas Onshore LP, a \_\_\_\_\_ limited partnership, on behalf of the partnership.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

27. **EFFECTIVE DATE.** This Agreement shall become effective (the "Effective Date") upon the execution of this Agreement by all parties hereto.

28. **COUNTERPARTS.** This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same instrument.

The parties have executed this Agreement on the dates set forth in the acknowledgements, but to be effective on the date identified in section 27.

**NOBLE ENERGY PRODUCTION, INC.**

By: \_\_\_\_\_  
Charles M. Countryman  
Attorney-In-Fact

**SOCO WATTENBERG CORPORATION**

By: \_\_\_\_\_  
Charles M. Countryman  
Attorney-In-Fact

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

By: \_\_\_\_\_  
Name: JOSEPH H. LORENZO  
Its: ATTORNEY-IN-FACT

2003

**MERIT ENERGY COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**DEVELOPER**

By: \_\_\_\_\_  
Duane E. Flack

By: \_\_\_\_\_  
Patricia Colleen Flack

3467572 04/09/2007 02:04P Weid County, CO  
13 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder



3467672 04/09/2007 02:04P Weld County, CO  
14 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder

ACKNOWLEDGMENTS

STATE OF COLORADO )  
 ) ss.  
CITY & COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007, by Charles M. Countryman, Attorney-In-Fact for Noble Energy Production, Inc., a Delaware corporation, on behalf of that corporation.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
CITY & COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007, by Charles M. Countryman, Attorney-In-Fact for SOCO Wattenberg Corporation, a Delaware corporation, on behalf of that corporation.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
CITY & COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 21st day of MARCH, 2007, by JOSEPH H. LORENZO, Attorney-In-Fact for Kerr-McGee Oil & Gas Onshore LP, a DELAWARE limited partnership, on behalf of the partnership.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public *Judy L. Luna*

My commission expires: \_\_\_\_\_



My Commission Expires 01/19/2011

27. **EFFECTIVE DATE.** This Agreement shall become effective (the "Effective Date") upon the execution of this Agreement by all parties hereto.

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The parties have executed this Agreement on the dates set forth in the acknowledgements, but to be effective on the date identified in section 27.

**NOBLE ENERGY PRODUCTION, INC.**

By: \_\_\_\_\_  
Charles M. Countryman  
Attorney-In-Fact

**SOCO WATTENBERG CORPORATION**

By: \_\_\_\_\_  
Charles M. Countryman  
Attorney-In-Fact

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**MERIT ENERGY COMPANY**

By: \_\_\_\_\_  
Name: Fred N. Diem  
Its: Vice President

**DEVELOPER**

By: \_\_\_\_\_  
Duane E. Flack

By: \_\_\_\_\_  
Patricia Colleen Flack

3467572 04/09/2007 02:04P Weld County, CO  
15 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder

3467572 04/09/2007 02:04P Weld County, CO  
16 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder

STATE OF TEXAS )  
COUNTY OF Dallas ) ss.

The foregoing instrument was acknowledged before me this 28th day of March, 2007, by Fred N. Dem, Attorney-In-Fact for Merit Oil Company, a Delaware corporation, on behalf of that corporation.

Witness my hand and <sup>Energy</sup> official seal Stephanie Lott  
Notary Public



My commission expires \_\_\_\_\_

STATE OF COLORADO )  
COUNTY OF \_\_\_\_\_ ) ss.

Before me the undersigned, a Notary Public, in and for said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, personally appeared Duane E. Flack to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF COLORADO )  
COUNTY OF \_\_\_\_\_ ) ss.

Before me the undersigned, a Notary Public, in and for said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, personally appeared Patricia Colleen Flack to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

27. **EFFECTIVE DATE.** This Agreement shall become effective (the "Effective Date") upon the execution of this Agreement by all parties hereto.

28. **COUNTERPARTS.** This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same instrument.

The parties have executed this Agreement on the dates set forth in the acknowledgements, but to be effective on the date identified in section 27.

**NOBLE ENERGY PRODUCTION, INC.**

By: \_\_\_\_\_  
Charles M. Countryman  
Attorney-In-Fact

**SOCO WATTENBERG CORPORATION**

By: \_\_\_\_\_  
Charles M. Countryman  
Attorney-In-Fact

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**MERIT ENERGY COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**DEVELOPER**

By: Duane E. Flack  
Duane E. Flack

By: Patricia Colleen Flack  
Patricia Colleen Flack

3467572 04/09/2007 02:04P Weld County, CO  
17 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder



3467572 04/09/2007 02:04P Weld County, CO  
18 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder

STATE OF TEXAS )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, Attorney-In-Fact for Merit Oil Company, a \_\_\_\_\_ corporation, on behalf of that corporation.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Weld )

Before me the undersigned, a Notary Public, in and for said County and State, on this 20<sup>th</sup> day of March, 2007, personally appeared Duane E. Flack to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written:

Zoe Ann Hancock  
Notary Public

My commission expires: Feb. 8, 2010

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Weld )

Before me the undersigned, a Notary Public, in and for said County and State, on this 20<sup>th</sup> day of March, 2007, personally appeared Patricia Colleen Flack to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written:

Zoe Ann Hancock  
Notary Public

My commission expires: Feb. 8, 2010

Exhibit A  
to Surface Use Agreement dated March 20, 2007  
among Noble Energy Production, Inc., SOCO Wattenberg Corporation, Kerr-McGee Oil  
& Gas Onshore LP, Merit Energy Company  
and Duane E. Flack and Patricia Colleen Flack

Legal Description

Township 5 North, Range 66 West  
Section 33: W/2  
Weld County, Colorado



3467572 04/09/2007 02:04P Weld County, CO  
19 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder



# SURFACE USE AGREEMENT EXHIBIT "C"



3467672 04/09/2007 02:04P Weld County, CO  
21 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder

## 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

This list of design, construction and contractor requirements, including but not limited to the following, is for the design and installation of foreign utilities or improvements on Kerr McGee Gathering LLC (KMG) right-of-way (ROW). These are not intended to, nor do they waive or modify any rights KMG may have under existing easements or ROW agreements. For information regarding KMG's rights and requirements as they pertain to the existing easements, please reference existing easements and amendments documents. This list of requirements is applicable for KMG facilities on easements and in road rights of ways only. Encroachments on fee property should be referred to the Land & ROW Department. Any reference to KMG in the below requirements is meant to include and apply to any Kerr McGee entity.

### Design

- KMG shall be provided sufficient prior notice of planned activities involving excavation, blasting, or any type of construction on KMG's ROW or near its facilities. This is to determine and resolve any location, grade or encroachment problems and allow for the protection of KMG's facilities and the general public. This prior notification is to be made before the actual work is to take place.
- The encroaching entity shall provide KMG with a set of drawings for review and a set of final construction drawings showing all aspects of the proposed facilities in the vicinity of KMG's ROW. The encroaching entity shall also provide a set of "as-built drawings" and submit to KMG, showing the facilities in the vicinity of KMG's ROW upon completion of the work.
- Only facilities shown on drawings reviewed by KMG will be approved for installation on KMG's ROW. All drawing revisions that affect facilities proposed to be placed on KMG's ROW must be approved by KMG in writing.
- KMG shall approve the design of all permanent road crossings.
- Any repair to surface facilities following future pipeline maintenance or repair work by KMG on it's "prior rights" ROW will be at the expense of the developer or landowner. In addition, any repair to surface facilities following future pipeline maintenance or repair work by KMG on replacement ROW granted to relocate KMG facilities will also be done at the expense of the developer or landowner unless expressly addressed in surface use agreements and approved in writing by KMG.
- The depth of cover over the KMG pipelines shall not be increased or reduced nor surface modified for drainage without KMG's written approval.
- Construction of any permanent structure within KMG pipeline easement is not permitted without written approval by KMG.
- Planting of shrubs and trees is not permitted on KMG pipeline easement without written approval by KMG.
- Irrigation equipment i.e. backflow prevent devices, meters, valves, valve boxes, etc. shall not be located on KMG easement without written approval by KMG.
- Foreign utility installations, IE, distribution gas, oil and gas gathering, water, electric, telephone, cable and sewer lines, etc., may cross perpendicular to KMG's pipeline within the ROW, provided that a minimum of eighteen inches (18") of vertical clearance is maintained between KMG pipeline(s) and the foreign utility. Any installation by a foreign utility with less than 18" of vertical separation is not allowed without written approval by KMG. In no case will vertical separation be less than 12" whether written or not. Constant line elevations must be maintained across KMG's entire ROW width, gravity drain lines are the only exception and must be approved in writing. Foreign line crossings below the KMG pipeline must be evaluated by KMG to ensure that a significant length of the KMG line is not exposed and unsupported during construction. Foreign line crossings above the KMG pipeline with less than 18" of clearance must be evaluated by KMG to ensure that additional support is not necessary to prevent settling on top of the KMG natural gas pipeline. A KMG representative must be on site during any crossing activities to verify clearance depths and to assure the integrity and support of the KMG facility. All installations of foreign crossings done by boring and or jacking require the KMG facility to be exposed to verify clearances.
- Foreign utilities shall not run parallel to KMG pipelines within the KMG easement without written permission by KMG. A minimum of 10.0 feet of horizontal separation must be maintained in parallel installations whether the foreign utility is



3467572 04/09/2007 02:04P Weld County, CO  
22 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder

## 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

placed within the KMG easement or adjacent to the KMG easement. Any deviation from the 10.0' horizontal requirement must be approved in writing by KMG and an "as built survey" provided to KMG after installation.

- 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 it's 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.



3467572 04/09/2007 02:04P Weld County, CO  
23 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder

## 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 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.
- 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.



3467572 04/09/2007 02:04P Weld County, CO  
24 of 24 R 121.00 D 0.00 Steve Moreno Clerk & Recorder

## 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

- KMG personnel shall install all test leads on KMG facilities.

### Local Kerr-McGee Gathering LLC Representation:

Manager of Construction & Facilities Engineering:	Kevin R. Osif, P.E.	Phone: 303 655 - 4307
Facilities Engineer:	Joseph E. Sanchez, P.E.	Phone: 303 655 - 4319
Foreman 1:	James Phillips	Phone: 303 655 - 4343
Foreman 1:	Rick Noffsinger	Phone: 303-655 - 4326

### Emergency Contacts:

On call supervisor	Phone: 303-559 - 4001
Kerr McGee 24 hour emergency number	Phone: 303-659 - 5922
One Call Emergency	Phone: 800-922 -1987