

**SURFACE USE AGREEMENT  
(McCarville GU /B/)**

This Surface Use Agreement ("Agreement") is effective the 1 day of September, 2010 ("Effective Date"), between JOHN B. AND BARBARA J. MCCARVILLE FAMILY TRUST, RAYMOND V. MCCARVILLE, INDIVIDUALLY AND AS TRUSTEE AND SUBSEQUENT TRUSTEE OF THE MCCARVILLE FAMILY TRUST DATED OCTOBER 19, 1995, and BRIAN S. MCCARVILLE, AS CO-CONSERVATOR OF THE PERSON AND ESTATE OF MARY R. MCCARVILLE, A/K/A MARY RUTH MCCARVILLE ("Landowner" whether one or more), with a mailing address of 506 N. Magnolia Ave., Monrovia, CA 91016, and BP America Production Company a Delaware corporation, ("BP") with an office at 380 Airport Road, Durango, CO 81303. Landowner and BP are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties".

Landowner owns the surface estate in a tract of land in La Plata County, Colorado, as more particularly described below ("Property").

WHEREAS, Landowner owns 100% of the surface of the SW/4NE/4 of Section 14, Township 33 North, Range 9 West, N.M.P.M., La Plata County, Colorado.

BP is the owner of certain rights in one or more oil and gas leases underlying the Property and is the operator ("Operator") of the McCarville GU /B/ ("Unit"). The Property is located within the Unit boundaries, and BP has plans to drill a Unit well, the McCarville GU /B/ #4 Well ("Well"), from a surface location on the Property.

Landowner and BP have engaged in a discussion of certain aspects of BP's plan for the drilling and operation of the Wells on the Property, and the Parties now desire to enter into this Agreement.

In consideration of ~~the sum of \$10,000.00~~ paid, or to be paid, by BP to Landowner and in consideration of the covenants contained in this Agreement, the Parties agree as follows:

**A. Landowner Rights, Duties and Obligations:**

1. Damage Compensation. Landowner agrees that the recited consideration constitutes full payment for all present and future surface damages that may occur to the Property as a result of BP's reasonable operations.
2. Re-Seeding of Disturbed Areas. Landowner has the right to specify the grass seed or seed mixture used by BP when reclaiming disturbed surface areas on the Property, as long as Landowner's seed request is reasonable, the grass seed or seed mixture is readily available in the area, and BP's use of the specified grass seed or seed mixture for reclamation is permitted under applicable laws, rules and regulations.
3. Landowner Use of Drillsite. Landowner agrees to not place or store any personal property or material of any kind on the Drillsite, including but not limited to placing or storing vehicles, farm equipment, hay or other crops on the Drillsite.
4. Survey Plats. Landowner has the right to receive a copy of any survey plat obtained by BP depicting the Drillsite (defined below) or any access roads, pipelines or other Well facilities.
5. Permission to Bury Synthetic Pit Liners. Landowner agrees that upon reclamation of the Drillsite, and if permitted by applicable law, BP may bury in place any synthetic drill pit liners used at the Drillsite.
6. Permission to Raise Utility Lines. Landowner hereby grants permission for La Plata Electric Association to raise utility lines on the Property when requested by BP and as reasonably necessary to access the Drillsite and to drill, complete and operate the Well.
7. Waiver of Facility Setback Regulations. BP will comply with all applicable state and federal law pertaining to the distance setbacks between the Well and other Well facilities, and Landowner's home and other buildings and improvements. Landowner hereby waives the right to enforce any local rules or regulations that may provide for more stringent distance setbacks than that provided by state and federal law.
8. Setback of Future Buildings from BP Well Facilities. Landowner agrees to comply with all local, state and federal laws pertaining to the distance setbacks between the Well and Well facilities, and any future homes, buildings (including portable buildings) and other habitable structures constructed or located on the Property. Regardless of the setback distance requirements under such laws, Landowner agrees that all such future structures will be located a minimum distance of at least 150 feet away from the Well and any of the associated wellhead equipment, lines and similar facilities, whether or not such facilities lie on the surface or below ground.
- \* 9. Colorado Waiver of Notice and Consultation. In accordance with sections 305.e(7) and 306.a(3) of the Rules and Regulations ("Rules") of the Colorado Oil and Gas Conservation Commission ("COGCC"), Landowner waives the right to receive the Landowner Notice and the Advance Notice set forth in COGCC Rule 305.e, and Landowner further waives the right to the Drilling Consultation set forth in COGCC Rule 306.a. Landowner acknowledges the receipt from BP of the information brochure for surface owners described in COGCC Rule 305.e(1)(A). Landowner acknowledges and agrees that BP has complied with all notice and consultation requirements of COGCC Rules 305 and 306.

10. Landowner Use of Property. Landowner expressly acknowledges that this Agreement shall be deemed to be specifically applicable to, and to fully satisfy, the obligation of BP to accommodate Landowner's use of the surface of the Property, existing or future, and Landowner waives any statutory or common law claims to the contrary.

**B. BP Rights, Duties and Obligations:**

1. Drillsite. BP will use only as much of the surface of the Property as is reasonably necessary for operation of the Well and associated facilities. BP estimates that the surface area that will actually be disturbed for the drill site of the Well ("Drillsite") will be approximately 2.4 acres which shall include the existing drill site of the McCarville GU/B/ #2 Well and the additional expected total disturbed area for the Well.
2. Excess Material. BP may store material (soil, dirt and gravel) excavated from the Drillsite on the Drillsite for reclamation of the Drillsite. BP may also import material from off of the Property as necessary for construction and reclamation of the Drillsite. After constructing the Drillsite should BP determine that there is material in excess of what is required for reclamation and can reasonably be stored on the Drillsite, then BP may deliver said excess material to a location on the Property that is mutually acceptable to BP and Landowner. Should a mutually acceptable location on the Property not be found, then BP may remove such excess material from the Property; provided that BP shall make a reasonable attempt to minimize the amount of excess material that it removes from the Property.
3. Firewood. Should BP cut down or trim any trees on the Property during its operations and should Landowner so desire, BP will cut wood greater than 4 inches in diameter into firewood lengths ranging from 12 to 18 inches in length and place such firewood in a pile (not stacked) just off of the Drillsite, road or pipeline route, as the case may be, for Landowner's use. All wood less than 4 inches in diameter will be chipped and spread on the Drillsite, road or pipeline route, as the case may be. Firewood will not in any case be split for the landowner. Any such wood not requested to be cut into firewood by Landowner will be buried or chipped and spread on the Drillsite, road or pipeline route, as the case may be.
4. Surveys. BP may obtain one or more surveys of the Drillsite and other Well facilities. BP will provide Landowner with a copy of the surveyor's plat as soon as reasonably possible after completion of each survey.
5. Recording of Agreement. BP may record this Agreement in the records of La Plata County, Colorado. BP may also, in its sole discretion and without the joinder of Landowner, execute and record from time to time written declarations with accompanying survey plats, and any amendments to same, for the purpose of locating and describing the Drillsite, access roads, pipelines and other Well facilities. The recording of such declarations, and any amendments, will serve for all purposes to locate and describe the Drillsite, access roads, pipelines or other referenced Well facilities.
6. Maintenance and Repair of Access Roads. BP will reasonably maintain any roads that may be used by BP on the Property, including any new roads that may be constructed by BP, and will make all necessary repairs to the roads caused by BP's use. However, BP will not be required to snow plow or otherwise clear any road of snow.
7. Burial of Pipelines. BP will, to the extent reasonably practicable, bury all water and gas pipelines to a minimum depth of 36 inches below the surface.
8. Noise Abatement. BP will comply with Colorado Oil and Gas Conservation Commission Rule 802 concerning noise abatement and will install sound walls, mufflers and/or other devices, if necessary under the rule.
9. Well Equipment. BP will make a reasonable effort to keep to a minimum the amount of Well equipment installed at the Drillsite.
10. Pits, Burial of Synthetic Liners. BP, in its discretion, may use synthetic liners for any Well pits used at the Drillsite. Upon reclamation of the Drillsite, and if permitted by applicable law, BP may bury in place any synthetic drill pit liners used by BP at the Drillsite.
11. Reclamation.
  - a. Initial Construction. After the drilling and completion of the Well, and the construction of any associated facilities such as the well pad, access roads and pipelines, those areas of land that BP will not use for continuing production operations will be reclaimed. The areas to be reclaimed include the pipeline surface disturbance area and the well pad surface disturbance area outside of the areas that will be used for ongoing Well operations. Reclamation will consist of filling all drilling pits, grading disturbed areas, and seeding with a readily available grass seed mixture reasonably requested by Landowner. Reclamation will be performed within a reasonable amount of time after completion of the Well or construction of any associated facilities, recognizing practical limitations of weather and season. Seeding will be performed with an appropriate mixture of broadcast and drill methods, but BP does not guaranty seed germination. All mitigation and reclamation activities by BP on the Property will conform to applicable laws, rules and regulations.
  - b. Subsequent Surface Disturbance. All subsequent disturbances by BP to areas reclaimed under the preceding paragraph will be similarly reclaimed by BP within a reasonable amount of time, recognizing practical limitations of weather and season. BP will make a reasonable attempt to notify Landowner in advance of any significant subsequent disturbance activities on the Property, including but not limited to, Well servicing, Well re-drill, and pipeline repairs, with the exception of emergency repairs.

Landowner Initials: *BP* *APM*



c. Final Abandonment. After cessation of all production from the Well and any future wells located in whole or in part on the Drillsite, all areas disturbed by BP will be reclaimed by BP in accordance with applicable laws, rules and regulations.

12. Indemnification. BP agrees to indemnify, defend and hold Landowner harmless from and against any and all expenses, losses or damages resulting from or relating to BP's operation and maintenance of the Well and associated facilities such as the well pad, access roads and pipeline; provided, however, BP will not indemnify, defend and hold Landowner harmless from such expenses, losses or damages to the extent resulting from or relating to the negligence or willful misconduct of Landowner or Landowner's employees, contractors, guests or invitees.

13. Compliance with the Law. BP will comply with all applicable laws, rules and regulations.

C. General Provisions:

1. Term. This Agreement is effective as of the Effective Date and will continue until all oil and gas leases underlying the Unit expire and production from the Well and any additional wells producing from the Unit have permanently ceased and are permanently plugged and abandoned. After expiration, BP will have a reasonable period of time within which to remove all Well equipment and facilities from the Property.

2. No Waiver of Other Rights. With the exception of those duties and obligations that each Party has specifically agreed to assume and perform in this Agreement, and the rights specifically granted to, waived or relinquished by a Party in this Agreement, this Agreement will not be construed to waive or relinquish any Party's legal rights in, to or under the Property, including but not limited to rights of ingress or egress, access or other reasonable surface use, now owned or hereafter acquired by a Party under any oil and gas lease or other agreement or instrument pertaining to the Property. Nor does this Agreement, subject to the foregoing exceptions, waive the rights of either Party under any applicable laws, rules or regulations pertaining to the Property.

3. No Application to Other Wells. The rights, duties and obligations of the Parties in this Agreement pertain only to the Well. This Agreement is not intended to, and will not be interpreted to, apply to any other well that may now be located or hereafter be drilled within the Unit, whether or not located on the Property. Each Party retains all of their legal rights with respect to such other well or wells, including but not limited to those legal rights referenced in the preceding paragraph.

4. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns. In addition, BP and its successor Well Operator may assign this Agreement to successive Operators of the Well. Assignment of this Agreement by either Party will act to terminate the assigning Party's duties, obligations and liabilities under this Agreement from and after the date that the non-assigning Party receives a true copy of the assignment, with the exception of any indemnity or monetary obligations accruing prior to such date.

5. Applicable Law. This Agreement will be interpreted under the laws of the state of Colorado.

6. Entire Agreement. This Agreement contains the final agreement of the Parties as to the matters addressed, and supersedes any and all prior oral or written negotiations, understandings and agreements. This Agreement may not be modified unless the modification is in writing and is signed by Landowner and an authorized representative of BP.

7. Further Assurance. The Parties agree, at any time and from time to time, upon the reasonable request of either Party and without additional consideration, to take or do all such further acts and things, and furnish and deliver all such further documentation and material (including any document or instrument requested by local, state or federal authorities) which, in the opinion of the requesting Party, may be necessary or useful in carrying out the purposes of this Agreement.

8. This Agreement is subject to the terms of a Side Letter Agreement ("SLA") dated June 1st 2010 by and between Landowner and BP.

This Agreement is executed by the Parties on the dates appearing in the acknowledgements below, but this Agreement is effective as of the Effective Date.

John B. and Barbara J. McCarville  
Family Trust

By: Barbara J. McCarville  
Barbara J. McCarville, Trustee

BP America Production Company

By: E.M. Sierra  
E.M. Sierra, Attorney-in-Fact

The McCarville Family Trust dated  
October 19, 1995

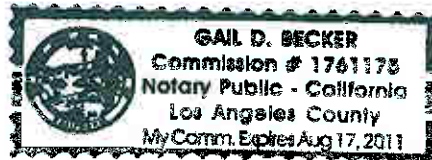
By: Raymond V. McCarville  
Raymond V. McCarville, Individually and  
as Trustee and Subsequent Trustee of The  
McCarville Family Trust dated October 19,  
1995

By: Brian S. McCarville  
Brian S. McCarville, as co-conservator of the  
person and estate of Mary R. McCarville,  
a/k/a Mary Ruth McCarville

Landowner Initials: Bjm

State of California  
County of LOS ANGELES

Subscribed and sworn to (or affirmed) before me on this 1st  
day of JUNE, 2010, by BARBARA T. MCCARVILLE  
proved to me on the basis of satisfactory evidence to be the  
person (X) who appeared before me.



(Seal)

Signature Gail D. Becker

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Bernardino

On 06/05/2010 before me, Sam Perez, Notary Public  
(Here insert name and title of the officer)

personally appeared Brian S. McCarville

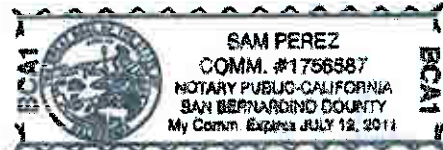
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he she they executed the same in his her their authorized capacity(ies), and that by his her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature of Notary Public

(Notary Seal)



## ADDITIONAL OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

### DESCRIPTION OF THE ATTACHED DOCUMENT

Surface Use Agreement  
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
- ☐ Corporate Officer

(Title)

- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other \_\_\_\_\_



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On 6-2-10

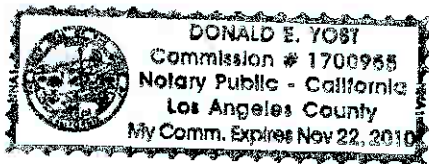
Date

before me, Donald E. Yost

Here Insert Name and Title of the Officer

personally appeared Raymond V. Mc Carville

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature Donald E. Yost

Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: SURFACE VSA Agreement

Document Date: 6-1-10

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

STATE OF TEXAS            )  
  ) ss.  
COUNTY OF Harris )

The foregoing instrument was acknowledged before me this 2 day of September, 2010 by  
E.M. Sierra as Attorney-in-Fact for **BP America Production Company**, a Delaware corporation.

Witness my hand and official seal the day and year last above written.

My Commission Expires:

4-30-2012

  
Notary Public

