

## SURFACE USE AND DAMAGE AGREEMENT

THIS AGREEMENT made and entered into this 14<sup>th</sup> day of July, 2009, by parties of the first part, Dennis L. Thompson and Gayla J. Thompson, husband and wife, whose address is P.O. Box 692, Vilas, CO 81087 and hereinafter referred to as "Owner", and Fossil Creek Resources, LLC 1521 N. Cooper Street, Suite 650, Arlington, Texas 76011, party of the second part, hereinafter referred to as "Operator".

WHEREAS, Owner is the owner of the surface estate of certain lands and Operator owns oil and gas leases and associated rights in the following described lands:

Township 35 South, Range 43 West, 6<sup>th</sup> P.M.

Section 11: South 3 Acres of Lot 1, Lot 15 and the North 3 Acres of Lot 16 containing 15.82 acres; Lots 2, 4, 6, 12, 13, 14, 17, 19, 21 of Tract 46 containing 158.91 acres.

Baca County, Colorado, herein described as "Contract Acreage".

WHEREAS, Operator desires to prospect, drill and explore the Contract Acreage consistent with good oil field practices, the laws of the United States, the laws of the State of Colorado and pursuant to the rights and obligations granted under oil and gas leases covering the Contract Acreage.

NOW, THEREFORE, for and in consideration of the covenants and agreements herein contained, and other good and valuable consideration, the Parties agree to jointly use the surface of the Contract Acreage as follows.

1. Owner hereby gives, grants, and conveys the right of ingress and egress to Operator, its agents, employees, representatives, contractors, suppliers and assigns, the right to enter upon and use the Contract Acreage as may be reasonably necessary for the purpose of exploring, drilling and testing, for oil and/or gas, completing producing and gathering and transporting oil and gas from the Contract Acreage, together with the right-of-way and easement across the lands of Owner to explore and drill for oil and gas, construct and maintain access roads, well site(s), tank batteries and pipelines, and other such related facilities as deemed necessary for Operator's complete enjoyment and rights granted in the oil and gas lease covering the Contract Acreage.

2. Operator shall notify Owner or its representatives, which may be designated by owner prior to conducting proposed operations upon the Contract Acreage as to the location of well site(s), road, pipelines and other facilities. Operator shall use the Contract Acreage consistent with its rights and obligations under the oil and gas lease(s) as may be deemed appropriate by a reasonable and prudent operator. Operator shall, upon request, provide Owner, at Owner's expense, with a survey plat of the surface tracts showing Operator's improvements, including well site(s) facilities, drill pads, buried flow lines and gas gathering lines on the Contract Acreage.

3. Roads will be maintained by Operator consistent with customary oil field practice.

4. Operator shall not bring alcoholic beverages, firearms or dogs on the Contract Acreage.

5. All ranch gates used by Operator shall be kept shut and locked as may be requested by Owner. Cattle guards shall be equipped by Operator where Operator deems necessary.

6. The term of this Agreement shall be run concurrently with the term of the oil and gas leases attributable to the Contract Acreage. At the end of said term, the terms and conditions hereof shall continue in full force and effect as to any wells theretofore drilled and as to roads, production facilities, pipelines and other related improvements constructed during said term.

7. Within six (6) months of complete cessation of production from or attributable to the Contract Area, Operator shall remove all of its property and equipment situated on the Contract Acreage and, where requested in writing by Owner, Operator shall restore the surface to a condition as nearly as practicable to its original condition.

8. Operator shall compensate the Owner for use of the surface, as above described, pursuant to the following:

A. Location: Operator agrees to pay Owner per well site the total sum of [REDACTED]. Well sites shall be limited to not more than three (3) acres in size, and upon written request by Owner, Operator agrees to fence pits and other dangerous areas, keep the well site(s) and rights-of-way safe and in good order and free of litter and debris.

B. Roads: For all roads constructed across the lands of Owner in connection with Operator's drilling, production or other rights hereunder, Operator agrees to pay [REDACTED] per rod for right-of-way as surface damages for each new road. In addition, if Operator uses existing

roads on the Contract Acreage, Operator agrees to maintain said roads at its own expense in at least the condition that they are in at the point Operator begins using them.

- C. Pipelines: Right-of-way compensation shall be at a rate of ~~6.50~~ per rod for all pipelines. Where feasible, all pipelines shall be buried below plow depth.
- D. Production Site: In the event Operator's well or wells on the Contract Acreage are producers and Operator need additional acreage other than the existing wellsite pad for production facilities, Operator shall compensate Owner at the rate of ~~6.50~~ per additional acre utilized for production equipment (excluding roads and pipelines).
- E. Compensation for Personal Property: Operator agrees to compensate Owner for extraordinary loss or damage caused by Operator, its agents or employees to its property or livestock. Operator shall indemnify, defend and hold harmless Owner from and against any and all claims, demands, causes of action and cost whatsoever, resulting from death or injury to persons, damage to or loss of property and environmental contamination or other harm, brought by any party arising out of or resulting from Operator's use and occupancy of the Contract Acreage, except to the extent that any of the foregoing is attributable to negligence (whether active or passive, sole, joint, or concurrent) or other fault of Owner, Owner's employees, agents, representatives, tenants, lessee, permittees, licensees, invitees, successors or assigns.
9. Notice by either party hereto shall be promptly given orally, if possible, and immediately mailed to the respective party at the following address:

OWNER: Dennis L. Thompson and Gayla J. Thompson, husband and wife  
P.O. Box 692  
Vilas, CO 81087  
719-523-6366

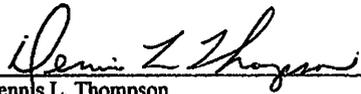
COMPANY: Fossil Creek Resources, LLC  
1521 N. Cooper Street, Suite 650  
Arlington, Texas 76011  
Attention: Tommy Helm  
1-817-701-4974

(Notice shall only be deemed as given when notice has been actually received in writing by the party to whom the notice is directed).

10. This Agreement shall be for the term specified herein and the terms and provisions hereof shall constitute covenants and conditions running with the lands covered hereby and shall inure to the benefit of and be binding upon Owner and Operator and their respective, heirs, executors, administrators, legal representatives, successors and assigns.

11. The rights of either party hereunder may be assigned in whole or in part.

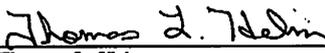
OWNER:

  
\_\_\_\_\_  
Dennis L. Thompson

  
\_\_\_\_\_  
Gayla J. Thompson

OPERATOR

FOSSIL CREEK RESOURCES, LLC

  
\_\_\_\_\_  
Thomas L. Helm  
Vice President - Land

