

AR2344931

SURFACE USE AGREEMENT

This Agreement is made and entered into this 30 day of June, 1993, by and between The Farmers Reservoir and Irrigation Company, (hereinafter "Frico"), and Elk Exploration, Inc. (hereinafter "Surface User").

Whereas Frico may own rights to certain oil, gas and associated hydrocarbons which rights are subject to a lease to Surface User (the Lease and the Lands subject to the Lease being more fully described on Exhibit A hereto and hereinafter termed "Lands" or "Lease" as the case may be); and

Whereas Surface User wishes to enter upon and use a portion of the surface of said Lands for the drilling, testing, completion, operation and maintenance of a well on said Land, and for the construction of an access road, preparation and use of a drill site area, mud pit and construction, installation and maintenance of production equipment and facilities such as flowlines, gas pipelines, separator, tank battery, and other equipment or facilities necessary for the production, transportation and sale of the oil, gas and associated hydrocarbons produced from the well drilled on the drill site (hereinafter "Operations"); and

Whereas Frico and Surface User wish to enter into this surface Use Agreement to specifically set forth the rights and obligations of the Surface User with respect to the use of the Land for the Surface User's operations.

Now therefore, in consideration of the sum of four thousand dollars (\$4,000.00) paid by the Surface User to Frico, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Grant of Surface Use. Frico hereby grants to Surface User the right to use so much of the surface of the Land as is designated on Exhibit B, attached hereto and incorporated herein, for the following operations:

a. Construction and use of an access road no more than 30 feet in width across the surface of the Land as depicted on Exhibit B. It is contemplated this road will be necessary only during the drilling and completion phases of Surface User's operations. Upon completion of drilling and either completion or plugging and abandonment of the well, the road shall be removed and the Land shall be restored as close as possible to its original state, including contour and vegetation. In addition, if the well is completed as a producing well, the Surface User may construct and use a road no more than 12 feet in width at the same location as the road described above. It is contemplated this road shall be used once a day for checking and maintenance of the well and tank battery. The roads shall be

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built of gravel pack.

b. Construction and use of a drill site located on the Land as depicted on Exhibit B, covering no more than <sup>3</sup>/<sub>4</sub> acres. It is contemplated the drill site will be used during drilling and completion operations only. Upon completion of drilling and either completion or plugging and abandonment of the well, the drill site shall be returned as close as possible to its original contours, topography and vegetation. All drilling mud and water shall be trucked off site. Upon completion of a well, Surface User may have exclusive use of an approximately twelve foot by twelve foot square where the wellhead is located. This wellhead square shall be kept fenced at all times. 

c. Construction and use of separators, gathering lines and a tank battery in the location depicted on Exhibit B for use in connection with the well. The tank battery shall be painted Elk's standard colors of tan with chocolate letters to blend as close as possible with the natural surroundings. The tank battery shall be kept fenced at all times.

In making this Grant of Surface Use, Frico makes no warranty, express or implied as to the quality or quantity of its title to the Lands. Rather Frico is granting the Surface Use to the extent its title only.

2. Limitations on the Conduct of Operations. a. Surface User shall conduct all of its operations on the Land, including construction of roads and the drill site, so as to prevent its operations from:

- (1). causing or contributing to soil erosion;
- (2). polluting the waters of reservoirs, springs, streams, ditches or wells whether upon the Lands of Frico or otherwise;
- (3). damaging reservoirs, ditches, fences and gates or other improvements located on the Land;
- (4). harming or injuring the animals, including water fowl, kept or using the Land;
- (5) interfering with other uses and users of the Land.

b. Surface User shall:

- (1). keep all gates used by Surface User closed when not in use;
- (2). dispose of all waste, drilling mud, soil, refuse and other products from its operations off site;
- (3). not use any water found or located on the Lands for its operations, unless specifically agreed to in advance in writing by Frico;
- (4). restore the Land to its original condition upon termination of this Agreement;
- (5). use the Land only for the purposes set forth in this Agreement;
- (6). comply with all federal, state and local laws and

regulations pertaining to the operations on the Land;

(7). maintain in good condition any existing roadways used by Surface User over the land;

(8). promptly fence any and all pits and fixed machinery which it may construct or place on the Lands;

(9). not use any materials, including surface or subsurface water, from on the Land or its operations, unless specifically agree to in advance in writing by Frico;

(10). remove all matter contaminated by Surface User's operations, including soil, off site.

3. Reservations by Frico. Frico reserves the right to use the Land, or to grant leases or licenses to others to use the Land, for whatever purposes Frico deems advisable to long as the same are not directly inconsistent with the surface use herein granted. Notwithstanding the foregoing, and even though such use may be inconsistent with the use of the Land by Surface User, Frico reserves the right to use the Land for the storage of water in the Milton Reservoir up to its adjudicated capacity of thirty-nine and one-half feet gauge height. Surface User acknowledges that Frico does not have control over the height of Milton Reservoir during high water, flood or other similar conditions and Surface User hereby assumes the risk of, and holds Frico harmless from, any damages to Surface User's property and any consequential damages resulting from flooding of the well resulting from high water. Notwithstanding any provision of this Agreement, no liability of any kind or character shall attach to Frico for injury or damage to Surface User's property on the Land unless such injury or damage results from gross negligence of Frico.

4. Termination of Surface Use. This Agreement shall terminate upon the occurrence of any of the following events:

a. The termination of the Lease.

b. The breach of any of the material obligations of this Agreement, unless Surface User fails to begin corrective action to such breach within 30 days after written notice from Frico.

c. One year from the date of execution of this Agreement, unless operations have commenced and been actively and diligently pursued.

5. Obligations upon Termination of Surface Use. Upon termination of this Agreement, Surface User shall forthwith take the following actions:

a. remove from the Land any and all surface equipment which it may have placed upon the Land;

b. remove from the Land any and all underground gathering systems which it may be buried upon the Land, unless the systems are buried in excess of 44 inches and a map accurately depicting their location is delivered to Frico, in which case the portion of the systems buried in excess of 44 inches may remain;

c. restore the Land to the condition existing at the date of

execution of this Agreement, except as specifically stated at 5.b. above.

6. Indemnity and Damages for Breach of Surface Use Agreement.

a. Surface User shall protect, indemnify and hold Frico, its officers, directors, employees and agents harmless from any loss, claim, demand, suit, cause of action, liability and any sanctions of every kind and character, including reasonable attorneys' fees, court costs, and costs of investigation, made or asserted by Surface User, its employees, agents, contractors and subcontractors or any third parties, on account of personal injury, death or property damage, including claims for pollution and environmental damage, or causes of action alleging statutory liability, caused by, arising out of or in any way incidental to operations conducted by or on behalf of Surface User on the Land.

b. In addition, Surface User shall pay to Frico damages, including consequential damages, for injury, damage or detriment, resulting from the operations of Surface User on the Land. Damages shall include the reasonable value of real estate, cost of providing water to third parties including uses for agriculture and domestic supplies, value of growing crops and livestock, recreational value and any other reasonable or customary use being made of the Land, subject however to the right of the Surface User to exercise the rights specifically granted herein.

c. Acceptance by Frico of the consideration stated herein is payment for the use of the surface as specifically set forth herein. By acceptance of the consideration, Frico is not waiving any claim it may have to damages resulting from the Surface Use and such consideration shall not be applied to any damages or consequential damages. Nothing herein shall be construed as a limitation upon the obligation of the Surface User to account for all damages arising directly or indirectly from Surface User's operation under this Agreement or the Lease.

7. Water Well. Surface User agrees that any well drilled on the land which does not produce oil or gas but which can be completed as a water well shall not be plugged and abandoned without the consent of Frico, and Frico shall have the privilege, but not the duty, of completing the well as a water well, without compensation to Surface User. Surface User shall give notice to Frico of the potential water well. If Frico gives notice to Surface User that it agrees to take over the well, it shall be at Frico's sole cost, risk and expense and Frico shall thereafter hold harmless Surface User from Frico's operations of the well and restoration of the Lands necessary for the well. If Frico does not give notice to the Surface User within 20 working days after it has received notice of the potential water well from Surface User, then Frico shall be deemed to have refused to take over the well.

8. Notice. Any notices to be delivered under this Agreement

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shall be deemed given when received via U.S. Mail or confirmed telefax to the addresses set forth on Exhibit C hereto, as they may be amended from time to time.

9. Assignment Surface Use Agreement. This Agreement is freely assignable to affiliates of Surface User and assignable to third parties with the prior written consent of Frico, which consent shall not be unreasonably withheld, but such assignment shall not release Assignee from any of the obligations hereunder.

10. Miscellaneous. a. There are no implied rights granted herein to Surface User, but only those specifically set forth in this Agreement.

b. This Agreement does not supersede or replace any provisions of the Lease except as specifically addressed by this Agreement.

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the undersigned parties. This Agreement is effective this 30 day of June 1993.

Farmers Reservoir and Irrigation Company

By: Albert L. Sack  
Title: President

Surface User

By: [Signature]  
Title: COO

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EXHIBIT "A"

Of that Certain Surface Use Agreement dated June 30<sup>th</sup>, 1993 by and between Farmers Reservoir and Irrigation Company and Elk Exploration, Inc.

Lands subject to Surface Use Agreement:

Lessor: Union Pacific Railroad Company  
Lessee: Pan American Petroleum Corporation  
Lease Date: October 16, 1970  
Expiration Date: Held by Production  
Recorded: Book 635 Inst. #:1556608  
County: Weld  
State: Colorado  
Description:

Township 3 North Range 64 West

Section 1: Lot 2 (N/2 NW/4), S/2 NW/4, S/2  
Section 3: Lot 2 (N/2 NW/4), S/2 NW/4, S/2  
Section 7: Lots 1 and 2 (W/2 W/2), E/2 W/2,  
SE/4  
Section 9: NW/4, S/2  
Section 15: NW/4, S/2  
Section 17: NW/4, S/2

Township 3 North Range 65 West

Section 1: Lots 3 and 4 (N/2 NW/4), S/2 NW/4,  
S/2  
Section 5: Lots 3 and 4 (N/2 NW/4), S/2 NW/4,  
S/2  
Section 9: NW/4, S/2  
Section 11: NW/4, S/2  
Section 13: NW/4, S/2  
Section 15: NW/4, S/2

Containing 5,737.27 acres more or less.

This Surface Use Agreement grants the right to use only the surface designated in Exhibit B for the well located NE/SW Sec.11 T3N-R65W.

EXHIBIT "B"

WCR 34 1/2

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○ Proposed Tank Battery Area

- Gr Elev 4810' 2735' FEL & 1558' FSL
- Gr Elev 4810' 2719' FEL & 1532' FSL
- Gr Elev 4810' 2703' FEL & 1507' FSL
- Gr Elev 4811' 2689' FEL & 1481' FSL

Existing FRICO Road

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