



**SURFACE USE AGREEMENT
(Anderson GC C #2 and #3)**

This Surface Use Agreement ("**Agreement**") is effective the 28th day of April, 2011 ("**Effective Date**"), between Todd McMenimen and James L. McMenimen ("**Landowner**" whether one or more), with a mailing address of 6880 C.R. 510, Ignacio, Colorado, 81137, and BP America Production Company, a Delaware corporation, ("**BP**") with an office at 380 Airport Road, Durango, Colorado, 81303. Landowner and BP are sometimes referenced 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, more particularly described as ("**Property**"):

NW/4SE/4 of Section 24, Township 34 North, Range 8 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 of the Anderson GC C ("**Unit**"). The Property is located wholly or partially within the Unit boundaries and BP has plans to drill a Unit well, the Anderson GC C #2 and #3 ("**Wells**"), from a surface location on the Property and within the Unit.

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 principally in order to confirm and/or clarify BP's plan.

In consideration of the promise by BP to pay a certain sum of money to Landowner (the amount of which is set forth in a side letter agreement) to be paid at the time of commencement of construction by BP in connection with the Wells and related roads, pipelines, facilities and infrastructure and in consideration of the covenants contained in this Agreement, the Parties agree as follows:

A. Landowner Matters:

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. BP shall comply with the Colorado Oil and Gas Conservation Commission ("**COGCC**") Rules and Regulations ("**Rules**") 1003 and 1004.
3. Landowner Use of Drillsite. BP will have exclusive and full use of the Drillsite, as defined below, at all times. Landowner shall not use the Drillsite for storage, access or any other purpose.
4. Cuttings Storage Areas or Pits. The requirements of COGCC Rules 902, 904 and 905, as amended from time to time, shall be followed by BP.
5. Permission to Raise, Move and Install Utility Lines. Landowner hereby grants permission for La Plata Electric Association ("**LPEA**") to raise, move and install utility lines on the Property when requested by BP in connection with the Wells. Landowner agrees to execute utility easements with LPEA as necessary to comply with this Article A.5.
6. Setback Regulations. BP will comply with all valid and applicable local, state and federal laws, rules and regulations pertaining to distance setbacks between the Wells and Landowner's existing home, buildings (including portable buildings) and any other habitable structures on the Property.
7. Setback of Future Buildings from BP Well Facilities. Landowner agrees to comply with all valid and applicable local, state and federal laws, rules and regulations pertaining to distance setbacks between the Wells and Well facilities, and any future homes, buildings (including portable buildings) and other habitable structures constructed or located on the Property. Regardless of such setback distance requirements, Landowner agrees that all such future structures will be located a minimum distance of at least 150 feet away from the Wells and any of the associated wellhead equipment, pipelines and facilities.
8. Waiver of Notice and Consultation. In accordance with sections 305.e(7) and 306.a(3) of the Rules of the 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. Landowner also waives the right to receive notices

under the La Plata County code, including, but not limited, to section 90-77 of said code in connection with the matters addressed in this Agreement.

9. Landowner Use of Property. Landowner expressly acknowledges that this Agreement shall be deemed to fully satisfy any obligation of BP to accommodate, whether under statute or common law, Landowner's use of the surface of the Property, existing or future.

B. BP Matters:

1. Drillsite. BP will use only as much of the surface of the Property as is reasonably necessary for operation of the Wells and associated facilities. BP estimates that the surface area that will actually be disturbed for the drill site of the Wells ("**Drillsite**") will be approximately 2.4 acres.
2. Excess Material. BP may store material (e.g., soil and gravel) excavated from the Property on the Drillsite to be used for construction reclamation of the Drillsite. BP also may import material from off of the Property 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 which 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. Any such excess material so delivered shall become the sole responsibility of Landowner, and BP shall have no further responsibility for said excess material. 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 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 BP deems appropriate for Landowner's use. In BP's sole discretion, it may purchase firewood to satisfy the foregoing firewood obligation. All wood less than 4 inches in diameter will be chipped and spread on the Drillsite, access road, reclamation areas or pipeline route, as BP deems appropriate. Firewood will not in any case be split for the Landowner. BP will not be responsible for the theft of any firewood. Any such wood not requested to be cut into firewood by Landowner will be buried or chipped and spread on the Drillsite, access road, reclamation areas or pipeline route, as BP deems appropriate.
4. Survey Plats. Upon Landowner's request in writing, BP will provide to Landowner a copy of any survey plat obtained by BP depicting the Drillsite or any access roads, pipelines or facilities on the Property.
5. Recording of Agreement. BP may record this Agreement in the records of La Plata County and Archuleta 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 existing roads that are used by BP on the Property in their pre-existing condition or better, in BP's sole discretion. BP will maintain any new roads that may be constructed by BP on the Property to BP's standards. BP 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 at the time of installation, unless subsurface conditions such as rock prohibit the installation of the line to that depth at a reasonable cost.
8. Noise Abatement. BP will comply with COGCC 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. Reclamation.

- a. Initial Construction. After the drilling and completion of the Wells, 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 as described in Article A.2, above. Reclamation will be performed within a reasonable amount of time after completion and first delivery of the Wells or construction of any associated facilities, recognizing practical limitations of weather and season. BP does not guaranty seed germination.
- 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.
- c. Final Abandonment. Any areas disturbed by BP, and which are required to be reclaimed, by BP in accordance with applicable laws, rules and regulations as set forth in Article A.2, above, unless Landowner desires that the roads and Drillsite remain in their then present condition and regulatory approval for same is obtained.

11. 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 Wells, facilities, access roads and pipelines; 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, in whole or in part, the negligence or willful misconduct of Landowner or Landowner's employees, contractors, guests or invitees.

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

13. Temporary Parking. Landowner agrees that during times of construction or other significant work, BP may park vehicles in areas near the work site or along roads.

C. General Provisions:

1. Term. This Agreement is effective as of the Effective Date and will continue until (i) all oil and gas leases underlying the Unit expire, (ii) production from the Wells and any additional wells producing from the Unit have permanently ceased and are permanently plugged and abandoned, (iii) any compressor on the Property is no longer being used and (iv) any Salt Water Disposal well in the Unit has ceased being used and is plugged and abandoned. After expiration, BP will have a reasonable period of time within which to remove such Well equipment and facilities from the Property as it deems appropriate or as required by applicable rules, regulations or laws.

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, those duties and obligations which have been confirmed or clarified 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 and other confirmatory or clarifying matters regarding the Wells and its related facilities in this Agreement pertain only to the Wells, except that roads, pipelines and facilities may be utilized for other wells. 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 his/her/its 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 Wells. 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, clarifications and confirmations of the Parties as to the matters addressed, and supersedes any and all prior oral or written negotiations, understandings and agreements regarding the Well and its related facilities, roads and pipelines. Except with respect to matters described in Article C.9 below, 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. Regulatory Conditions. If BP is required by any regulatory agency as a condition of approval to either change the location of the wells to be drilled or the configuration of the Drillsite, BP reserves the right to unilaterally amend the SUA to conform to the new location(s) and/or configuration(s) as approved by the regulatory agency.
9. Memoranda of Understanding. BP will comply with any applicable La Plata County Memorandum of Understanding (MOU) regarding electrification of the Well.
10. Counterparts. This Agreement may be executed in two or more original counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
11. Side Letter Agreement. This Agreement is subject to the terms of a Side Letter Agreement ("SLA") dated April 28th, 2011, by and between Landowner and BP the terms of which are fully incorporated herewith.

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.

Landowner

BP America Production Company

Todd McMenimen

James L. McMenimen

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



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5 of 5

5/20/2011 10:45 AM
AGR R\$31.00 DS\$0.00

Tiffany Lee Parker
Laplata County Clerk

STATE OF COLORADO)
) ss
COUNTY OF LA PLATA)

SUBSCRIBED AND SWORN TO before me this 28th day of April, 2011, by Todd
McMenimen.

My commission expires: 2-2-2013

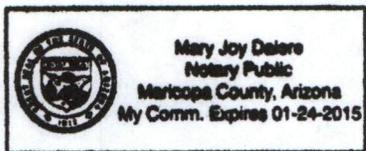
Notary Public

STATE OF Arizona)
) ss
COUNTY OF Maricopa)

SUBSCRIBED AND SWORN TO before me this 13 day of April, 2011, by James
L. McMenimen.

My commission expires: 01-24-2015

Notary Public



STATE OF ~~TEXAS~~ Colorado)
) ss
COUNTY OF ~~HARRIS~~ (Harris))

SUBSCRIBED AND SWORN TO before me this 12th day of May, 2011, by E.M.
Sierra, Attorney-in-Fact for BP America Production Company, a Delaware corporation.

My Commission Expires:
04/21/2014



Notary Public