

# SURFACE USE AGREEMENT

This Surface Use Agreement ("Agreement") is made effective this 15<sup>th</sup> day of October, 2012, by and between Tailholt Resources, LLC, whose address is 3003 Harmony Road, Suite 400, Fort Collins, Colorado 80528, hereinafter jointly and severally referred to sometimes herein as "Owner"; and Great Western Oil and Gas Company, LLC, a Colorado Limited Liability Company, with offices at 1700 Broadway, Suite 650, Denver, Colorado 80290, hereinafter sometimes referred to as "Operator"; each of the foregoing sometimes referred to individually as a "Party," or collectively as the "Parties."

For and in consideration of the covenants and agreements contained herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by the Owner, the Parties agree as follows:

## 1. OWNERSHIP.

Owner is the surface owner of certain lands, such lands and improvements thereon hereinafter sometimes referred to as the "Lands", located in Weld County, Colorado more specifically described as follows:

SEE ATTACHED ADDENDUM FOR ADDITIONAL TERMS AND CONDITIONS:

### TOWNSHIP 6 NORTH, RANGE 67 WEST, 6<sup>th</sup> P.M.

Section 11: Parcel #1: Lot B of Corrected Recorded Exemption No. 0807-11-2-RE 3694 according to that certain map or plat thereof as recorded September 29, 2004 under Reception No. 3223254.

Parcel #2: Lot C of Corrected Recorded Exemption No. 0807-11-2-RE 3694 according to that certain map or plat thereof September 29, 2004 under Reception No. 3223254.

Parcel #3: Lot D of Corrected Recorded Exemption No. 0807-11-2-RE 3694 (including BE) according to that certain map or plat thereof September 29, 2004 under Reception No. 3223254.

Parcel #4: Lot B of Recorded Exemption No. 0807-11-3-RE 3615 according to that certain map or plat thereof as recorded October 23, 2003 under Reception No. 3119803, EXCEPTING THEREFROM Tract B of Hidden Valley Farm Subdivision First Filing, according to that certain map or plat thereof recorded October 24, 2007 under Reception No. 3513226.

Operator, or its affiliates, owns a working interest in valid leases covering all or portions of the Lands or lands pooled or included in a spacing unit therewith (each a "Lease," collectively, the "Leases"). Additionally, Operator may have responsibilities under a Joint Operating Agreement ("JOA") with respect to the Lands.

## 2. OPERATOR'S OIL AND GAS OPERATIONS ON THE LANDS.

Operator intends to drill or cause to be drilled oil and/or gas wells on the Lands, as depicted approximately on Exhibit "A" attached hereto ("Wells"). In order for Operator to drill, construct, complete, produce, maintain, and operate the Wells and all facilities

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associated therewith, including, but not limited to, access roads ("Access Roads"), pipelines, flow lines, separators, tank batteries, electric lines and any other facilities, or property necessary for Operator to conduct operations on the Wells (each a "Facility," collectively, the "Facilities"), it is necessary that Operator enter and utilize a portion of the surface of the Lands.

The Parties enter into this Agreement to evidence their entire agreement regarding the payment of surface damages, entry, surface use, and any other matters relating to Operator's use of the Lands.

### **3. LOCATION.**

The approximate location of the Wells, the Access Roads to the well sites and certain other Facilities to be constructed on the Lands are depicted on Exhibit A, attached and incorporated into this instrument by this reference. Any material changes to the locations of the well sites, Access Roads and Facilities may be made by Operator with the consent of Owner, which shall not be unreasonably withheld.

### **4. CONDUCT OF OPERATIONS.**

Operator's operations on the Lands shall be conducted pursuant to the terms of the Leases, this Agreement, the rules and regulations of the Colorado Oil & Gas Conservation Commission ("COGCC"), and applicable Colorado statutes and case law.

**5. COMPENSATION.** Operator agrees to pay owner the sum of Eighty Thousand and 00/100ths Dollars (\$80,000.00) ("Amount") for the wells site pad and tank battery location as described in attached Exhibit "A" prior to the commencement of drilling operations. This amount shall be deemed full and agreed consideration for all damages caused or created by reason of the reasonable and customary ingress, egress, rights-of-way, drilling, completion, production and maintenance operations associated with the wells and facilities. Such damages will include, without limitation, damages to growing crops and crop land; the removal, transportation and care of any livestock; the re-seeding, construction and use of access roads; and the preparation and use of the wellsite areas. Any subsequent major operations for said wells (refrac, deepening, re-drilling, etc.) except in case of emergency shall require ten (10) days prior notice to owner.

### **6. ADDITIONAL SURFACE USE PROVISIONS, ACCESS ROADS, FENCES AND FACILITIES.**

With respect to its operations on the Lands, Operator shall comply with the following provisions:

#### **A. Access Roads:**

- (i) Access Roads shall not exceed 20 feet in width.



(ii) Operator will maintain all Access Roads, including shoulders, barrow-ditches, slopes and other associated disturbed or improved areas in good repair and condition, including weed control.

(iii) Operator will manage and control all storm water, drainage, erosion control, and required dust mitigation associated with all Access Roads.

**B. Surface Restoration:**

Upon permanent cessation of Operator's operations on the Lands, all areas thereof occupied or utilized by Operator shall be restored by Operator to their original contour as nearly as is reasonably practicable.

**C. Other:**

(i) Operator will install culverts on the Lands that may be necessary to maintain present drainage and irrigation otherwise affected by its operations on the Lands.

(ii) If by reason of the activities of the Operator, including, but not limited to, drilling, completing, equipping, and operating of the Wells, there is damage to personal property of the Owner, including, but not limited to, irrigation wells, fences, culverts, bridges, pipelines, ditches, or irrigation systems, for which Owner has not been previously compensated pursuant to Paragraph 5, and upon Owner's notification to Operator, Operator shall repair or replace such items after consultation with and to the reasonable satisfaction of the Owner, which repair or replacement shall be accomplished by Operator within twenty-one (21) days after final consultation with Owner.

(iii) Operator agrees that all trash, refuse pipe, equipment, liquids, chemicals, or other materials brought on the Lands that are not necessary for continued operations of the Wells shall be removed and disposed away from the Lands by Operator no later than 30 days after the completion of the Wells. No such items shall be burned or buried on the Lands by Operator.

(iv) Operator shall keep the wellpad, tank battery area, Access Roads and other areas used by Operator free and clear of noxious weeds and trash during operations.

(v) Operator shall remove all guy line anchors for drilling and completion rigs promptly after Operator's rig use is completed.

(vi) Operator agrees to fence off the perimeter of the well sites with temporary fencing if reasonably requested by Owner. Operator will install cattle guards where necessary and shall be responsible for restoring Owner's existing fence to its original condition at any point of access.

(vii) Operator will provide a sound barrier around the well sites during drilling operations consisting of hay bales to be placed in an area and size acceptable to Owner.

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(viii) Operator will place a fence around the wellsite and tank battery site. This fence shall be a six (6) foot chain link fence. Operator will place lath in chain-link fence at request of Owner.

(ix) Operator agrees to compensate landowner or any third party for any damages caused by Operator operations that may occur outside of the designed wellsite, tank battery site, Access Roads or other areas used by Operator.

**7. DEFAULT AND RIGHT TO CURE.**

In the event of alleged default by Operator in the payment of any of the sums hereinabove provided to be made, in obligations to be performed, or any other terms, conditions or covenants of this Agreement, Owner shall notify Operator of such alleged default in full and complete detail, in a writing delivered to Operator by certified mail, return receipt requested. Operator shall have thirty (30) days from its actual receipt of the written notification in which to pay, in the event of alleged non-payment, or to commence and diligently pursue a cure of any other alleged default, and upon such lapse of time, should such alleged default still remain in effect, then and only then shall Owner have the right and option to declare a default under this Agreement.

**8. WAIVER.**

Except as otherwise agreed in a subsequent writing subscribed to by both parties, no waiver by owner of any breach by the Operator of any of its obligations, agreements, or covenants hereunder shall be deemed to be a waiver of any subsequent or continuing breach of the same, nor shall any forbearance by Owner to seek a remedy for any particular alleged or actionable breach by the Operator be deemed to be a waiver by Owner of its rights or remedies with respect to any other alleged or actionable breach; however in no event shall Operator be liable for consequential damages.

**9. INDEMNITY/RELEASE.**

Owner hereby releases and agrees to hold harmless Operator from any and all liability and further payment, other than what has been provided herein, for damages on the Lands which arise from, out of or in connection with the Operator's operations on the Lands, but only as to those operations which are described in and permitted by this Agreement, and for those operations which the Amount has been paid and received by Owner pursuant to this Agreement. Operator agrees to indemnify and hold Owner harmless from any and all claims, damages and causes of action arising out of and caused by Operator's operations on the Lands that may be asserted by any of Operator's agents, employees, subcontractors, contractors or persons entering upon the premises at the request of Operator.

**10. NOTICE FOR ADDITIONAL OPERATIONS.**

Operator shall comply with COGCC rules and regulations requiring that advance notice be provided to Owner for subsequent operations on the Wells, including, but not limited to, reworking operations thereto.

**11. NOTICES.**

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Notice by either Party shall be timely given, orally if possible (with the exception of notices described in Paragraphs 6(C)(ii) and 7 above), with additional and immediate subsequent written confirmation sent by United States mail, postage prepaid and addressed to either Party at the address as designated below; or to such other place as either Party may from time to time designate by written notice delivered in the way described in this paragraph to the other:

Owner:

Tailholt Resources, LLC  
3003 Harmony Road, #400  
Fort Collins, Colorado 80525  
c/o Stanley K. Everitt  
(970) 226-1500

Operator:

Great Western Oil and Gas Company, LLC  
ATTN: Wade Pollard, Land Manager  
1700 Broadway, Suite 650  
Denver, Colorado 80290  
Facsimile: 303-776-1056  
Email: wpollard@gwogco.com

**12. BINDING EFFECT.**

The covenants and conditions herein contained and all of the provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto, and their respective heirs, representatives, successors and assigns. Owner agrees to notify any and all tenants of Lands and any other third parties utilizing the surface of the Lands who may be affected by Operator's activities on the Lands. It shall be Owner's sole responsibility to advise such third parties of the existence of this Agreement and Operator's right to utilize the surface of the Lands pursuant to this Agreement; and payment of consideration, if any, which may be due any such third party from Owner as a result of Operator's actions on the Land under this Agreement shall be the sole obligation of Owner, and Owner shall protect, defend and indemnify Operator from any and all claims and demands from such third parties as a result of Operator's actions under this agreement.

**13. CONFIDENTIALITY.**

In addition to any other confidentiality requirements provided for herein, Owner agrees to keep the terms and conditions of this agreement confidential and shall not disclose such matters to any third party, unless owner is ordered to do so by specific order of the court in a legal proceeding. Notwithstanding the foregoing, owner may disclose terms to owner's legal advisors, and payment terms to owner's official tax advisors and appropriate government taxing authorities. While the specific terms hereof are to be held in strict confidence by Owner, Operator may at its option record a memorandum of this agreement in Weld County, Colorado and with any other appropriate agency of government.

**14. ENTIRE AGREEMENT.**

This instrument contains the entire agreement between the Parties and all prior negotiations and representations are merged within this instrument, and the terms of such



may not be modified orally or in any other manner other than by agreement in writing signed by all Parties or their respective heirs, representatives, successors or assigns.

**15. TERMINATION.**

This Agreement shall remain in effect unless and until specifically abandoned by Operator in a writing delivered to Owner, or filed by Operator in the records of Weld County, Colorado. All rights to indemnification and requirements for reclamation and provisions relating thereto shall survive termination of this Agreement.

**16. COUNTERPARTS.**

This Agreement shall be executed in duplicate originals, each party to retain one such original. This Agreement shall be binding if properly signed and fully executed and sent by facsimile transmitted to the other Parties. Without affecting the validity of the foregoing manner of execution, the Parties agree to follow-up such facsimile executions with standard paper originals signed by the parties as soon as may be practical.

**17. GOVERNING LAW AND VENUE.**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the state of Colorado; and Weld County, Colorado, shall be the forum for resolution of all disputes under this Agreement.

**18. FORCE MAJEURE.** The passage of any deadline or time relevant under this instrument shall be deemed tolled, and nonperformance of any required obligation that Operator may have under this instrument shall be excused without penalty to Operator as to any time period, in which Operator is prevented or hindered from performing due to any governmental action or inaction, and any force majeure which shall include without limitation any act, circumstance, event or condition beyond the control of Operator which shall include without limitation any act, warning or threat of terrorism, war, revolution, rebellion, insurrection, riot, civil commotion, blockade, embargo, shortage of necessary expertise, and shortage or lack of transportation and delivery of necessary tools, equipment, material and supplies due to market conditions, act or restraint of government, strike, lockout, picketing, boycott, or damage by earthquake, fire, hurricane, tornado, flood, wind, storm, temperature extreme or other weather instability, disaster or condition, or by reason of any other circumstance or combination of same beyond Operator's control.

**18. ATTORNEY'S FEES AND COSTS.**

The Parties agree that in any action, claim or controversy resulting from a claimed breach of this Agreement, each party shall bears its own costs, expenses and attorney fees. The provisions of this paragraph do not apply to any actions other than breach, or a claim thereof, including without limitation indemnification provisions.

**20. AUTHORITY OF SIGNATORIES.**

The signatories below declare, warrant and represent that they have the authority to enter into this Agreement on behalf of their respective principals, if any.

**21 BINDING EFFECT.**

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This Agreement constitutes a covenant running with the Lands and shall be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors, affiliates, administrators, trustees, authorized representatives, executors and assigns.

DONE effective the date first written above, by the parties:

OWNER:  
Tailholt Resources, LLC

OPERATOR:  
Great Western Oil and Gas Company, LLC

By:   
Stanley K. Everitt, as Manager

By:   
Tom Rand, Vice-President of Operations

#### ADDENDUM

1. Prior to the commencement of drilling, the applicant must submit the following conditions, as amended:
  - a. The applicant shall submit a comprehensive Initial Drilling and Site Improvement Plan regarding drilling activities and initial installation of related site improvements details pertaining to all of the following:
    - (1) Site access plan. This item shall address haul routes and site access points.
    - (2) Public street clean-up and tracking prevention. This item shall include a tracking pad to be reviewed by the Town.
    - (3) Site grading. The Drilling and Site Improvement Plans and supplemental information shall address site grading, including any earth berms for emergency containment.
    - (4) The following notes and certification blocks shall be included on the Initial Drilling and Site Improvement Plan:
      - i. The applicant shall comply with all rules and regulations of the Colorado Oil and Gas Conservation Commission.
      - ii. The facilities shall be kept clean and otherwise properly maintained at all times.
      - iii. A signed owner's acknowledgement.





- iv. The existing access may be utilized for agriculture and oil and gas well activities. This access point is temporary and may be required to be removed at such time that permanent access is available in the future. The Owner and the Town shall approve any changes to the location of access.
  - b. The applicant shall submit a comprehensive Perpetual Maintenance Plan regarding the on-going life of the wells, tank batteries, access roads and other facilities associated with drilling and operations that includes, but is not limited to, details pertaining to all of the following:
    - (1) Site access plan. This item shall address haul routes and site access points.
    - (2) On-Going Public Street cleaning. This item shall include a tracking pad to be reviewed and approved by the Town.
    - (3) Site lighting. This item shall include details regarding site lighting fixtures and locations. Security and other site lighting shall utilize full cutoff light fixtures to mitigate light pollution.
    - (4) The following notes shall be included on the Perpetual Maintenance Plan:
      - i. The applicant shall maintain compliance with all rules and regulations of the Colorado Oil and Gas Conservation Commission.
      - ii. The facilities shall be kept clean and otherwise properly maintained at all times.
      - iii. A signed owner's acknowledgement.
      - iv. The existing access may be utilized for agriculture and oil and gas well activities. This access point is temporary and will be required to be removed at such time that permanent access is available in the future.
  - c. The applicant shall obtain any applicable building permits from the Town prior to constructing any improvements on site.
  - d. The applicant shall address and comply with the conditions of Windsor-Severance Fire Rescue.
- 2. The following conditions of approval shall be incorporated into the aforementioned plans for the review and approval:

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- a. The applicant shall utilize electric motors on operational facilities in order to mitigate the noise impacts on the adjacent residential neighbors.
- b. The applicant shall ensure that the wells and tanks are of the minimum size required to satisfy the present and future functional requirements to mitigate visual impacts. Low profile tanks are preferred.
- c. Air quality.
  - i. The applicant shall participate in any required Environmental Protection Agency (EPA) air quality monitoring and/or other testing by allowing EPA to install equipment on site for said monitoring and testing.
  - ii. The applicant shall install and operate an emissions control device (ECD) capable of reducing Volatile Organic Compound (VOC) emissions on the subject oil and gas equipment in accordance with Colorado Oil and Gas Conservation Commission (COGCC) and/or the Colorado Department of Public Health and Environment rules and regulations.
  - iii. The applicant shall submit to the Town copies of all air emissions reporting as required by the COGCC and/or the CDPHE's Air Pollution Control Division.
- d. Water quality.
  - i. The applicant shall ensure that any hydrocarbon discharges from the site comply with all state and federal water quality requirements.
  - ii. The applicant shall participate in the Colorado Oil and Gas Association (COGA) Baseline Groundwater Quality Sampling Program utilizing independent third party sampling and laboratories and shall provide to the Town test results obtained before and after drilling operations.
- e. Emergency Containment. The Secondary containment berm surrounding all storage vessels shall be designed and constructed to contain a minimum of 110% of the volume of the largest vessel located within the containment area or to State of Colorado standards, whichever requirements are more stringent.



- f. Waste Disposal. The applicant shall submit to the Town copies of all waste management reports as required by the COGCC and/or the CDPHE rules and regulations.

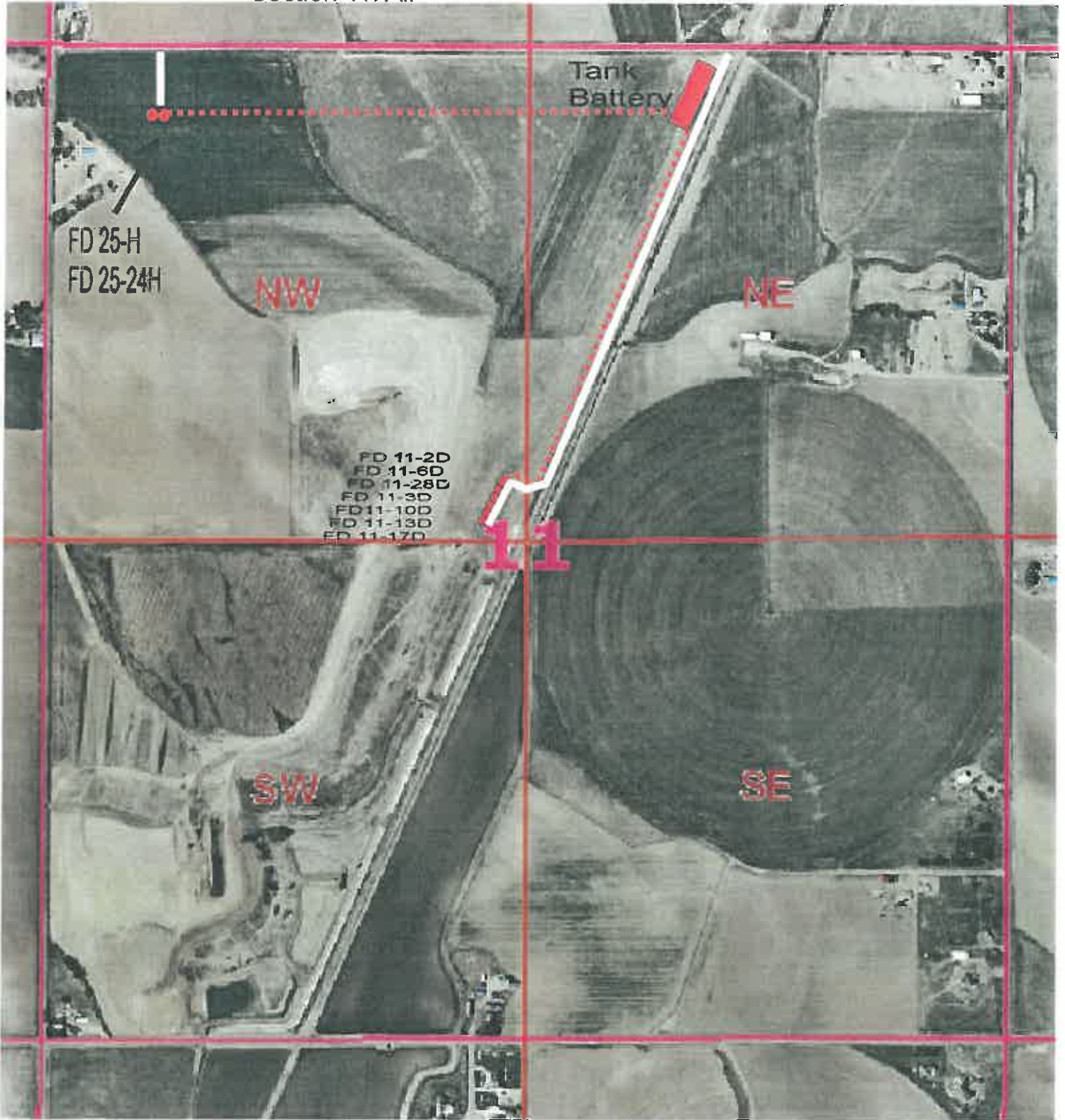
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# EXHIBIT "A"

This Exhibit "A" is attached to and made a part of that Surface Use Agreement between Tailholt Resources, LLC, as "Owner" and Great Western Oil and Gas Company, LLC, as "Operator", dated October 15th, 2012.

TOWNSHIP 6 NORTH, RANGE 67 WEST, 6th P.M.  
Section 11: All



Access Road  Flow Line 

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