

T3N R68W SEC 20



3470884 04/23/2007 04:03P Weld County, CO
15 of 15 R 76.00 D 0.00 Steve Moreno Clerk & Recorder

SCALE 1 : 2,357



EXHIBIT A



SURFACE USE AGREEMENT

This Surface Use Agreement ("Agreement") is made this 7th day of April, 2007, by and between TOP Operating Co. ("Operator"), whose address is 10881 W. Asbury Avenue, Suite 230, Lakewood, Colorado 80227, and Haley Land Company, LLC and Susan L. Haley (Haley Land Company, LLC and Susan L. Haley shall be referred to collectively as "Surface Owner"), both with an address of 14491 Weld County Road 5, Longmont, Colorado 80504.

RECITALS

A. Surface Owner collectively owns the surface estate of that certain tract of land being a portion of the SE/4 of Section 19 and S/2 of Section 20, all in Township 3 North, Range 68 West of the 6th P.M., Weld County, Colorado and more specifically described on Schedule 1 attached hereto (hereinafter referred to as the "Property"):

B. Operator is the owner of all of the oil and gas leasehold interest in and under the Property.

C. Surface Owner has the right to and plans to develop the surface of the Property.

D. Operator currently operates one (1) oil and gas well on the Property ("Existing Well") and may have plans to drill additional wells on the Property in the future ("Future Wells") (collectively, the "Wells").

E. This Agreement sets forth the parties' rights and obligations regarding the relationship between the development of the Property by Surface Owner and Operator's operation and development of its oil and gas leasehold estate, such rights and obligations to be binding upon the parties' successors and assigns.

In consideration of the mutual covenants contained herein, including the Recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. WELL LOCATIONS AND OPERATIONS AREA

a. Surface Owner shall provide Operator the space designated on Exhibit A (the "Oil and Gas Operation Area" or "OGOA") in its present condition for the Wells and for any operations conducted by Operator in connection with the Wells, including, but not limited to, production activities, workovers, well deepenings, recompletions, fracturing and replacement wells. The OGOA is more specifically described as follows: A tract of land bounded on the north by a line running 30 feet south of and parallel to the existing irrigation ditch located in the N/2NW/4SW/4 of Section 20, T3N, R68W, 6th P.M.; bounded on the east by a line running 30 feet west of and parallel to the existing concrete lined irrigation ditch in the E/2NW/4SW/4 of said Section 20; bounded on the



west by a line running north and south and located 150 feet west of the well bore of TOP Operating Co.'s Haley #1 well in said Section 20; and bounded on the south by a line running east and west and located 150 feet south of said well bore; provided, however, Operator shall be permitted to use the 30 foot wide areas located between the OGOA and the irrigation ditches to the north and east for temporary access during drilling, completion and maintenance of the Wells.

b. The wellhead location of any Future Well shall be within and no closer than 150 feet (150') from the perimeter of the OGOA.

c. Except for the space included within the OGOA, and including the access roads and all access and necessary easements associated with flowlines, gathering lines and pipelines as provided in this Agreement, Operator shall not occupy the surface of the Property except in the event of an emergency.

d. Surface Owner will not locate any building, structure or road within the OGOA without Operator's approval, which approval shall not be unreasonably withheld.

2. PRODUCTION FACILITIES

a. Operator shall have the right to locate, build, repair and maintain tanks, separators, dehydrators, treating, storage and measuring facilities and other equipment reasonably appropriate for the operation and production of the Wells ("Production Facilities") only within the OGOA. Compressors, with the exception of wellhead compressors, shall not be located on the Property.

b. Any new Production Facilities shall be clustered near the existing Production Facilities as shown on Exhibit A with the minimum required setbacks for such facilities.

c. Surface Owner shall have the right to request that Operator relocate all Production Facilities at Surface Owner's sole cost and expense, and Operator shall not refuse such request, so long as such relocation is reasonable from a technical and engineering standpoint and complies with all COGCC and other applicable rules and regulations.

d. With respect to Operator's Wells and Production Facilities:

i. Operator shall install and maintain, at its sole cost and expense, all fences around the Wells in compliance with the rules and regulations of the COGCC. The fence material may be upgraded at Surface Owner's option and expense, so long as the upgrade complies with COGCC rules and regulations;

ii. Operator shall install and maintain, at its sole cost and expense, all gates and locks reasonably necessary for the security of the Wells or Production Facilities in the OGOAs. Such gates and locks shall be the standard gates and locks used by Operator;

iii. Operator shall paint any Production Facilities for any Wells, including wellhead guards, with paint that is approved by the COGCC. The color may be selected by the Surface Owner, provided that any additional cost of using the color is paid by Surface Owner and that it is in compliance with COGCC rules and regulations; and

iv. Operator shall keep all Production Facilities in a good state of repair.

3. PIPELINES, FLOWLINES AND GATHERING LINES

a. Surface Owner hereby grants to Operator non-exclusive easements in the locations shown on Exhibit A to construct, operate, maintain, repair and replace all flowlines, gathering lines and other pipelines (collectively "Pipeline(s)") that may be necessary to Operator's operations on the Property. The Pipeline easements shall be no more than fifty feet (50') during construction and thirty feet (30') permanently.

b. All Pipelines shall be buried to a depth of 48 inches (48") from the surface.

c. The construction and burying of additional Pipelines shall be at the sole cost and expense of Operator or its gas purchaser.

d. Surface Owner shall have the right to request that Operator relocate any Pipelines at Surface Owner's sole cost and expense, and Operator shall not refuse such request, so long as such relocation is reasonable from a technical and engineering standpoint and complies with all COGCC and other applicable rules and regulations.

e. Operator shall abandon any portion of a Pipeline easement that will no longer be used for its operations. If the abandoned portion of the Pipeline easement was granted by way of a recorded easement or right-of-way, such release of the abandoned portion shall also be recorded.

4. ACCESS

a. The access routes ("Access") to be used by Operator shall be those routes depicted on Exhibit A.

b. Access used by Operator shall be 25 feet (25') in width and Operator shall keep Access maintained in accordance with the rules and regulations of the COGCC.

c. Surface Owner shall have the right to relocate or substitute the Access depicted on Exhibit A with a different access route at Surface Owner's sole cost and expense. Such relocated or substituted Access shall be sufficient in scope to allow Operator to conduct the operations contemplated for the Wells and built to withstand the weight of Operator's equipment and vehicles. Operator shall abandon the portions of the Access that will no longer be used as a result of any relocations or substitutions.

5. LANDSCAPING

Surface Owner shall have the right to install and maintain gravel paths, ground cover, landscaping and watering systems ("Landscaping") in the OGOA and on the Pipeline easements at its own risk and expense. Operator shall not be responsible for any damage to such Landscaping caused by its operations.

6. SETBACKS

Surface Owner understands and acknowledges that the COGCC has rules and regulations that apply to the distance between a wellhead and public roads, production facilities, building units and surface property lines, among other things. In order to give full effect to the purposes of this Agreement, Surface Owner hereby waives its right to object to the location of any of Operator's facilities on the basis of setback requirements in the rules and regulations of the COGCC, as they may be amended from time to time, provided that such facilities are located in accordance with this Agreement. Surface Owner further and similarly waives its right to object to any other state or local setback requirements or other requirements or regulations that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of Operator, its successors or assigns, to explore for and produce the oil and gas in accordance with this Agreement. Operator, its successors or assigns may cite the waiver in this paragraph in order to obtain a location exception or variance under COGCC rules or from any other state or local governmental body having jurisdiction. Surface Owner agrees not to object to the use of the surface in the Oil and Gas Operations Areas so long as such use is consistent with this Agreement and Surface Owner will provide Operator, its successors or assigns with whatever written support they may reasonably require to obtain permits from the COGCC or any local jurisdiction.

7. REPRESENTATIONS

Each party represents that it has the full right and authority to enter into this Agreement.

8. INDEMNIFICATION

Operator agrees to defend, indemnify and hold Surface Owner harmless from any and all third party claims, demands or judgments connected with Operator's use of the Property.

9. SUCCESSORS AND COVENANTS RUN WITH THE LAND

This Agreement constitutes covenants running with the land and the terms, covenants, and conditions hereof shall be binding upon and shall inure to the benefit of the parties and their respective heirs, devisees, executors, administrators, successors and assigns.



3470885 04/23/2007 04:03P Weld County, CO
5 of 11 R 56.00 D 0.00 Steve Moreno Clerk & Recorder

10. TERM

This Agreement shall become effective when it is fully executed and shall remain in full force and effect until Operator's leasehold estate expires or is terminated, and Operator has plugged and abandoned all Wells owned all or in part by Operator and complied with the requirements of all applicable oil and gas leases pertaining to removal of equipment, reclamation, cleanup and all other applicable provisions of the leases and existing laws and regulations.

11. NOTICES

Any notice or other communication required or permitted under this Agreement shall be sufficient if deposited in U.S. Mail, postage prepaid, with a courtesy copy sent via facsimile or e-mail if immediate action is desired, addressed to each of the following:

If to Operator:

TOP Operating Co.
10881 W. Asbury Avenue, Suite 230
Lakewood, Colorado 80227
Attention: Rodney K. Herring
Fax: (303) 727-9925

If to Surface Owner:

Haley Land Company, LLC
14491 Weld County Road 5
Longmont, Colorado 80504
Attention: John R. Haley
Fax: (303) 776-3292

Any party may, by written notice so delivered to the other parties, change the address or individual to which delivery shall thereafter be made.

12. RECORDING

A copy of this Agreement shall be recorded in the books and records of the Office of the Clerk and Recorder for the County in which the Property is located.

13. APPLICABLE LAW

Unless waived or otherwise stated herein, Operator shall conduct its operations on the Property in accordance with all of the rules and regulations promulgated by the COGCC, as well as all other state and federal laws, rules and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws provision.

14. ENTIRE AGREEMENT

This Agreement, which incorporates the Schedule and Exhibit attached hereto and made a part hereof, sets forth the entire understanding among the parties hereto regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement shall not be amended, except by written document signed by all parties.

15. EXECUTION AND COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which shall be deemed an original instrument but all of which together shall constitute one and the same instrument, and shall be binding upon and inure to the benefit of the parties, and each of their respective heirs, executors, administrators, successors and assigns and is executed by the parties as of the date set forth above.

16. SEVERABILITY

If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with such laws; however, the remainder of this Agreement shall be in full force and effect.

IN WITNESS WHEREOF the undersigned parties have caused this Agreement to be executed by a duly authorized representative on the day and year first above written.

TOP OPERATING CO.



Rodney K. Herring
Title: *president*

HALEY LAND COMPANY, LLC

John R. Haley
Title:

SUSAN L. HALEY



14. ENTIRE AGREEMENT

This Agreement, which incorporates the Schedule and Exhibit attached hereto and made a part hereof, sets forth the entire understanding among the parties hereto regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement shall not be amended, except by written document signed by all parties.

15. EXECUTION AND COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which shall be deemed an original instrument but all of which together shall constitute one and the same instrument, and shall be binding upon and inure to the benefit of the parties, and each of their respective heirs, executors, administrators, successors and assigns and is executed by the parties as of the date set forth above.

16. SEVERABILITY

If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with such laws; however, the remainder of this Agreement shall be in full force and effect.

IN WITNESS WHEREOF the undersigned parties have caused this Agreement to be executed by a duly authorized representative on the day and year first above written.

TOP OPERATING CO.

Rodney K. Herring
Title:

HALEY LAND COMPANY, LLC

John R. Haley
Title: *Haley Land Co. LLC*

SUSAN L. HALEY

Susan L. Haley



3470885 04/23/2007 04:03P Weld County, CO
8 of 11 R 56.00 D 0.00 Steve Moreno Clerk & Recorder

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by Rodney K. Herring as _____ of TOP Operating Co. on behalf of said company

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF COLORADO)

) ss.

COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 13TH day of APRIL, 2007, by John R. Haley as MANAGER of Haley Land Company, LLC on behalf of said company.

Witness my hand and official seal.

My commission expires: My Commission Expires 7-20-2010



Kimberly M. O'Dham
Notary Public

STATE OF COLORADO)

) ss.

COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 13th day of APRIL, 2007, by Susan L. Haley.

Witness my hand and official seal.

My commission expires: 3/27/08



Nina M. Sandorac
Notary Public



STATE OF Colorado)
City and) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 20th day of April, 2007, by Rodney K. Herring as President of TOP Operating Co. on behalf of said company



Witness my hand and official seal.

My commission expires: 01/03/2011

Antoinette L. Taylor
Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by John R. Haley as _____ of Haley Land Company, LLC on behalf of said company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by Susan L. Haley.

Witness my hand and official seal.

My commission expires: _____

Notary Public