

## SURFACE USE AGREEMENT

**THIS AGREEMENT** is made and entered into this 7<sup>th</sup> day of August, 2012, by and between **Ziemer Trust**, whose address is 101 East Colonial Ct., Roseville, CA 95661 (hereinafter "Surface Owner"), and **Kerr-McGee Oil & Gas Onshore LP**, whose address is 1099 18<sup>th</sup> St., Suite 1800, Denver, CO 80202 (hereinafter "KMG").

### Recitals:

- A. Surface Owner is presently the owner of legal title to the surface estate of the following described lands located in Weld County, Colorado (the "Lands"). The Lands are currently under that certain Contract to Buy and Sell Real Estate dated July 2<sup>nd</sup>, 2009 with Kevin Moser and Lindsay Moser ("Purchasers"). Pursuant to the terms and conditions of the Contract to Buy and Sell Real Estate, Surface Owner will convey both beneficial and legal title to such a surface estate upon fulfillment of Purchasers' duties and obligations under the Contract to Buy and Sell Real Estate.

Township 1 North, Range 65 West of the 6<sup>th</sup> P.M.  
Section 5: NW/4, containing approximately 155 acres

- B. Surface Owner currently leases the Lands to the Purchasers, pursuant to the Agricultural Lease Agreement between Surface Owner and Purchasers, dated July 10<sup>th</sup>, 2009, and such uses will continue during the term of this Agreement.
- C. KMG owns mineral interests and/or operates oil and gas leases covering all or a portion of the Lands (the "Leases");
- D. KMG desires to prospect, drill, produce and explore for oil and gas on the Lands pursuant to the terms of the Leases, and in association therewith, to exercise its right under applicable law to use and possess so much of the Lands as is reasonably required for the operation of the Leases;
- E. This Agreement sets forth the parties' rights and obligations regarding the relationship between the development of the Lands by Surface Owner and KMG's operation and development of its oil and gas leasehold estate underlying the Lands, such rights and obligations to be binding upon the parties' successors and assigns.
- F. Purchasers, as holders of equitable title to the Lands, are simultaneously executing a Surface Use Agreement for the Lands on the same terms and conditions as set forth herein.

**NOW THEREFORE**, for and in consideration of the covenants and agreements herein contained, the parties agree as follows:

### 1. Compensation for Operations; Release of All Claims

If Surface Owner owns legal title to the Lands, KMG shall pay the sum and perform the obligations set forth in and according to the terms of that certain Letter Agreement by and between Surface Owner and KMG of even date, as full consideration and final settlement and satisfaction for any and all detriment, depreciation, injury or damage of any nature to the Lands or growing crops thereon that may occur as a result of KMG drilling and completion operations on the Lands, and its continuing activities for the production and/or transportation of oil, gas, or other hydrocarbons or products associated with such operations and activities including, but not limited to, surface use, access, mud and reserve pits, wellhead equipment, separators, tank batteries, pipelines, gathering lines, flowlines, pipeline interconnections, and any and all other reasonable and customary uses of land related to said operations or activities. If Purchasers own legal title to the Lands when operation(s) are commenced pursuant to this Agreement, KMG shall make the payments pursuant to this paragraph 1, if any, to Purchasers. KMG shall only be obligated to compensate the person(s) that

owns legal title to the Lands when each operation is commenced hereunder. Surface Owner hereby waives any right to compensation due under this Agreement or the Letter Agreement if Surface Owner does not own legal title to the Lands when the wells are drilled.

2. Acknowledgement of Right of Way and Easement

Surface Owner acknowledges and understands that KMG, as owner or lessee of the oil and gas estate for the Lands, owns an easement and right-of-way that burdens the Lands, and that KMG has a continuing right and entitlement to construct, own, operate, maintain, repair and replace all flowlines, gathering lines, other pipelines and related equipment that may be necessary or convenient to its operations on the Lands, including but not limited to, constructing, using and maintaining access roads, locations for surface equipment and subsurface gathering lines, pipelines and pipeline interconnections for its operations and activities; provided, however, KMG agrees that it will not construct pipelines in a manner that interferes with existing improvements on the Lands at the time the pipelines are proposed to be constructed.

Surface Owner further agrees that, Kerr-McGee Gathering LLC, an affiliate of KMG, or another third party gas gatherer designated by KMG, may exercise the easement rights described herein.

3. Term

If the Purchasers satisfy the terms and conditions of the Contract for Deed and acquire legal title to the Lands, then this Agreement shall terminate automatically. Otherwise, this Agreement shall terminate upon the cessation of all production from the wells constructed pursuant to the Leases, the release of the minerals underlying the Lands from any unit or pooling agreement or the expiration of the Leases, whichever is the latter.

4. Waivers

Surface Owner hereby waives its right to and covenants not to protest or object to the use of the surface of the Lands so long as such use is consistent with this Agreement. Furthermore, Surface Owner will provide KMG or its successors and assigns with any and all written support they may reasonably require to obtain permits from the Colorado Oil and Gas Conservation Commission or any local jurisdiction.

5. Binding Agreement

This Agreement shall be binding upon the respective heirs, executors, administrators, successors, and assigns of the parties hereto.

The undersigned have executed this Agreement as of the day first above written.

**Ziemer Trust**

By: Donna Cales, Trustee

Name: DONNA CALES

Title: TRUSTEE

**Kerr-McGee Oil & Gas Onshore LP**

By: David Bell JS

David Bell  
Agent & Attorney-in-Fact

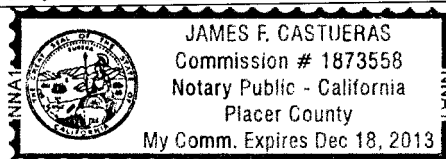
STATE OF CALIFORNIA )  
 )ss  
COUNTY OF PLACER )

The foregoing instrument was acknowledged before me this 7 day of AUG, 2012, by  
RONNA ROSE CALES.

Witness my hand and official seal.

[Signature]  
Notary Public

My commission expires DEC. 18, 2013



\*\*\*\*\*

STATE OF Colorado )  
 )ss  
COUNTY OF Adams )

This instrument was acknowledged before me this 15 day of August, 2012, by David  
Bell, Agent & Attorney-in-Fact of Kerr-McGee Oil & Gas Onshore LP, on behalf of said company.

Witness my hand and official seal.

[Signature]  
Notary Public

My commission expires May 4, 2016

