

SURFACE USE AGREEMENT

This AGREEMENT dated the 1st day of May, by and between Kenneth L. Hudgeons and Candice R. Hudgeons, whose address is P.O. Box 891, Dove Creek, CO 81324, whether one or more ("Surface Owner"), and Kinder Morgan CO2 Company, L.P., a Texas Limited Partnership whose address is 1001 Louisiana Street, Suite 1000, Houston, TX 77002, ("Kinder Morgan").

WITNESSETH:

In consideration of the sum of Ten and More Dollars (\$10.00+), Surface Owner and Kinder Morgan have reached agreement regarding Kinder Morgan's use of the Property related to oil and gas development thereon for the purposes of:

constructing, operating, maintaining, protecting, inspecting, a well pad location as shown on the well pad planview & cross sections location plat attached as Exhibit "C", hereto and made a part hereof approximately 5.46 acres, more or less, together with a right of way and easement for a road which driving surface will not exceed a width of fifteen (15) feet on each side of center, of the usual (graveled) or customary character, and constructing, operating, maintaining, protecting, inspecting, testing, repairing, altering, replacing, moving, removing, changing the size of and abandon in place a pipeline or pipelines, and flow lines, and drilling, testing, completing, re-completing, reworking, re-entering, pumping, operating, constructing, and maintaining a well, associated production facilities, and pipelines. Kinder Morgan shall have the full and complete use of the original well pad for future operations, with the right and privilege to reduce the size of said well location during interim reclamation periods, together with the right and privilege to enlarge the size of the well location from interim reclamation size to the original limits of disturbance size of location to allow Kinder Morgan reasonable and necessary use of the surface estate "to explore for, develop, test, and produce oil and gas (the term gas as used herein shall include but not limited to Carbon Dioxide Gas "CO2")" ("subsequent operations") located within the following-described real estate situated in Dolores County, Colorado, to-wit:

Township 40 North, Range 18 West, N. M. P. M.
Tract 68 lying in Sections 4 and 9
(the "Property")

1. Surface Owner acknowledges that the premises are to be utilized by Kinder Morgan for the purpose of constructing a well pad and access road(s) and pipelines for Kinder Morgan's use related to oil and gas development thereon for the purpose of drilling and producing one (1) CO2 well from the surface location upon Surface Owner Property as depicted on Exhibits "A", "B", "C", and "D" attached hereto and made a part hereof.

2. Kinder Morgan shall have full and complete use and access to the original approximately 5.46 acres, more or less well pad location at all times. Surface Owner and Kinder Morgan further agree that the payment is for all damages to the Property including, but not limited to, damages to growing crops, trees, sod, damage to croplands, Conservation Reserve Program reimbursements or losses, construction of access road and preparation and use of the well location area, preparation and use of reserve pits, and construction, installation, and maintenance

of production equipment and production facilities, such as pipelines, separators, tank batteries and other equipment or facilities necessary or convenient for the production, testing, transportation, and sale of oil, gas and other materials, and rights of ingress and egress to and from, and at all times over and along and upon the Property for the purposes herein expressed. Notwithstanding the preceding, Surface Owner and Kinder Morgan further agree that the consideration for potential future damages to crops resulting from the rights and privilege of Kinder Morgan to enlarge the size of the well pad location from interim reclamation size to the original limits of disturbance size of location to allow Kinder Morgan reasonable and necessary use of the surface estate "to explore for, develop, and produce oil and gas (including but not limited to Carbon Dioxide Gas "CO2")" ("subsequent operations")" will be based on crop values per acre at such time or times.

3. This Agreement shall have a term co-extensive with the life of the Well and so long thereafter as needed. Any abandoned well will be plugged and abandoned by Kinder Morgan, its successors or assigns according to the procedures set by the Colorado Oil & Gas Commission.

4. Kinder Morgan shall maintain the road(s), as to its use, in a good workman like condition and install culverts, cattle guards, and/or gates where appropriate and mutually agreed upon; provided, however, that future changes in the use of the Property by Surface Owner which require the addition or modification of gates, cattle guards, culverts or similar facilities, shall be the sole responsibility of the Surface Owner. Kinder Morgan agrees to a yearly weed control program to keep the well pad and roads clear of all types of unwanted weeds.

5. Kinder Morgan hereby indemnifies and holds Surface Owner harmless from and against any and all claims, damages and causes of action arising out of Kinder Morgan's operations on the Property, unless such claims, damages or causes of action result in whole or in part from Surface Owner's conduct on the Property. Surface Owner hereby indemnifies and holds Kinder Morgan harmless from and against any and all claims, damages and causes of action asserted against Kinder Morgan by any surface tenant or occupant of Surface Owner's Property in connection with any damage or disturbance caused by Kinder Morgan to lands or growing crops asserted by such occupant or surface tenant. Surface Owner may allocate the payment hereunder with any surface tenant or occupant, if applicable, as they shall mutually determine between themselves and Kinder Morgan shall have no responsibility in connection therewith. The payment and other agreements made by Kinder Morgan and contained herein constitute the full and entire compensation and consideration to be paid by Kinder Morgan to Surface Owner, for all damages (except for potential future damages to crops resulting from Grantee's "subsequent operations" as specified and provided for in provision 2 above), to and reasonable use of the surface of the Property resulting from Kinder Morgan's oil and gas activities.

6. This agreement is subject to an unrecorded Letter Agreement of even date by and between the parties hereto relative to the above-described Property. No variations, modifications or changes shall be binding upon either party unless set forth in a document duly executed by both parties. Further, this Agreement shall not be interpreted or construed to be an adaptation of any other agreement between the parties hereto, or their predecessors, and nothing contained herein shall in any way be construed to mean the adoption, ratification or waiver of any other agreement between the parties hereto.

7. This Agreement shall be construed, interpreted and governed by the laws of the state where the Land is located. This Agreement is binding upon the heirs, successors and assigns of the parties hereto and the privilege of assigning in whole or in part is expressly allowed.

8. Surface Owner agrees that the terms of this Agreement reasonably accommodate Surface Owner's use of the Property pursuant to C.R.S. § 34-60-127.

9. **No Waiver of Rights.** This Agreement or even the willingness to consider executing this Agreement will not be construed as a waiver of any rights of ingress or egress, access or other reasonable use of the surface that Kinder Morgan has under any oil and gas lease or other agreement or under any local, state or federal laws, rules or regulations, pertaining to the Property. This Agreement is intended to avoid any issue or question as to the use of the Property but is not a waiver of other contractual or legal rights in the event this Agreement is deemed unenforceable for any reason. Kinder Morgan reserves its rights under all existing leases, units, contracts, laws, rules and regulations regarding the ingress or egress, access and other reasonable use of the surface of the Property.

12. **Consultation and Meeting Procedures.** Surface Owner hereby confirms the consultation and meeting procedures requirements as required by Rule 306 of the Colorado Oil and Gas Conservation Commission ("COGCC") rules have been fulfilled by Grantee.

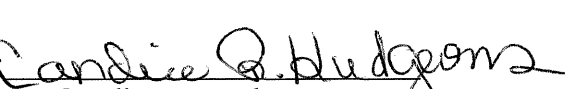
13. **Notices.** Surface Owner hereby confirms that the surface owner Notices requirements as required by Rule 305 of the COGCC have been fulfilled by Kinder Morgan and furthermore, Surface Owner hereby waives the thirty (30) day notification prior to commencement of drilling operations as required by Rule 305.f of the COGCC rules and has received the brochure, "Information for Oil and Gas Operators, Surface Owners and Surface Tenants," as per COGCC Rule 305.f.

14. **Applicable Law.** This Agreement shall be interpreted under the laws of the state of Colorado.

WHEREOF WITNESS my hand as of the day and year first above written.

Surface Owner:

By: 
Kenneth L. Hudgeons

By: 
Candice R. Hudgeons

Kinder Morgan CO2 Company, L.P., a Texas Limited Partnership

By: _____
S. Paul Nunley, Attorney-in-Fact

STATE OF Colorado }
COUNTY OF Morales } ss

On this 5th day of May, 2014, before me a notary public in and for said county and state personally appeared Kenneth L. Hudgeons and Candice R. Hudgeons personally known to me to be the same persons who executed the foregoing instrument and such person acknowledged the same as their voluntary act and deed.

Witness my hand and official seal.

Steph M. Macin
Notary Public

My Commission Expires: November 20, 2015

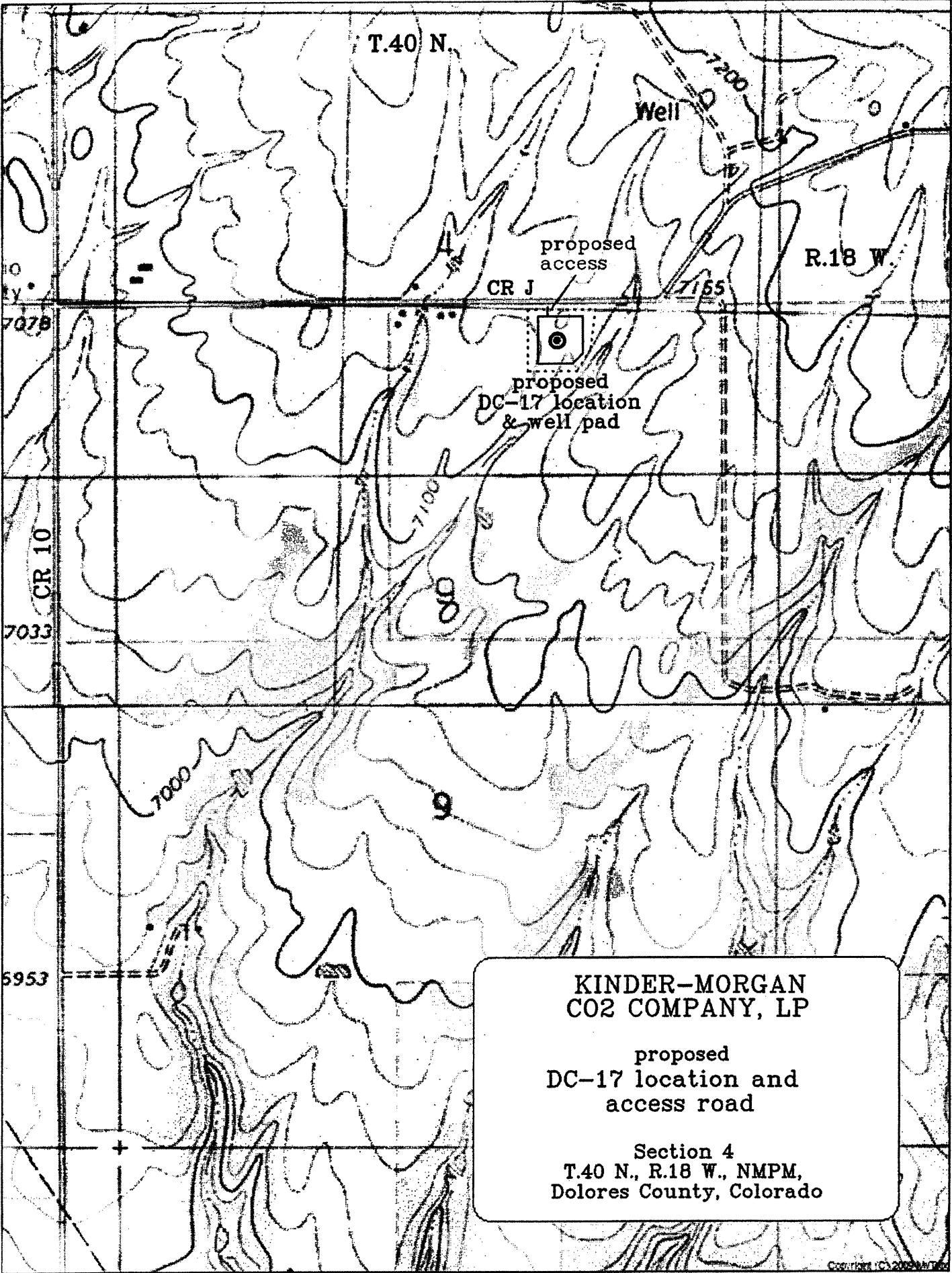
STATE OF TEXAS)
) ss. ACKNOWLEDGEMENT
COUNTY OF HARRIS)

Subscribed and acknowledged to before me this ____ day of _____, 2014, by S. Paul Nunley, Attorney-in-Fact for Kinder Morgan CO2 Company, L.P, a Texas Limited Partnership.

WITNESS my hand and official Seal.

Notary Public, State of Texas

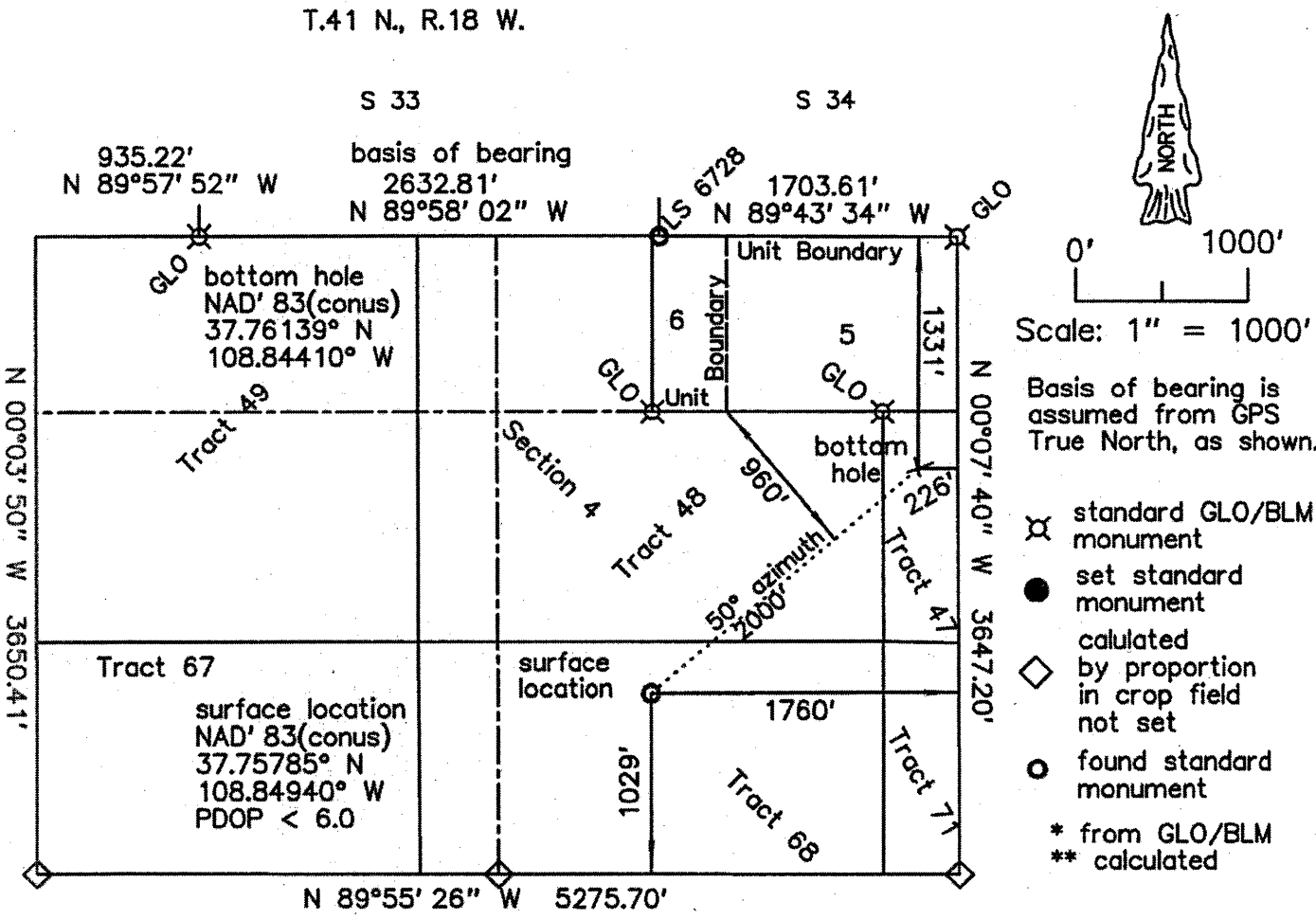
My Commission Expires: _____



KINDER-MORGAN
CO2 COMPANY, LP

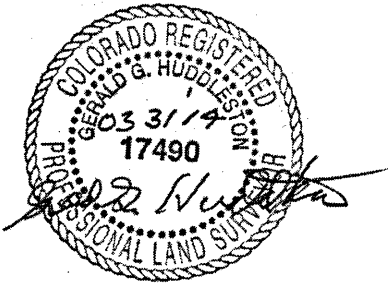
proposed
DC-17 location and
access road

Section 4
T.40 N., R.18 W., NMPM,
Dolores County, Colorado



KINDER MORGAN CO2 COMPANY, LP
Doe Canyon # 17
1029' FSL & 1760' FEL – surface location
Section 4, T.40 N., R.18 W., NMPM
Dolores County, CO
7152.8' grd. el. NAVD '88 (from OPUS)
1331' FNL & 226' FEL – bottom hole
Section 4, T.40 N., R.18 W., NMPM

- Notes:
- 1) Distances/dimensions are perpendicular to section/aliquot lines.
 - 2) Surface use is Fee, dryland crop.
 - 3) GPS was corrected by OPUS, instrument operator was R.J. Caffey, CO LS 36562.
 - 4) There is an occupied residence within 1000 feet (860 feet), and a road and power line within 260 feet.



KNOW ALL MEN BY THESE PRESENTS that I, GERALD G. HUDDLESTON, do hereby certify that this plat was prepared from field notes of an actual survey made by me or under my supervision and that the same is true and accurate to the best of my knowledge and belief.

date of survey: 03/25/2014
03/31/2014
date of plat: 03/31/2014

limits of disturbance 5.46 acres



- t-post/location
- lath/pin flag
- ✕ U-post/lath

