

## SURFACE AND SUBSURFACE USE AGREEMENT

This Surface and Subsurface Use Agreement (this "Agreement") is made and entered into this 16<sup>th</sup> day of August, 2012, by and between **Marshal Quinter Fike and Suzette Fulton-Fike**, husband and wife, ("Owner") with an address at P.O. Box 81 (3850 James Canyon Drive), Jamestown, Colorado 80455 and **Pico Niobrara, LLC** ("Operator") with an address at 7979 Ivanhoe Avenue, Suite 300, La Jolla, California 92037.

Whereas, Owner is the owner of the surface estate of lands described below ("Lands"):

**All that portion of the N½ of the NW¼ and the S½ of the NW¼ of Section 36, Township 5 North, Range 64 West of the 6<sup>th</sup> P. M., contained within the following described parcel: commencing at Northwest corner of said Section 36, thence East 2360 feet, thence South 14° 15' W, 960 feet, thence South 78° 45' W, 200 feet, thence South 47° 16' W, 255 feet, thence South 45° W, 521 feet, thence South 54° 57' W, 342 feet, thence South 59° 20' W, 491 feet, thence South 52° 23' W, 275 feet, thence North 85° 10' W, 256 feet, thence North 41° 5' W, 22 feet, thence West 236 feet, thence North 2113 feet, to the point of beginning. Weld County, Colorado;**

Also known as 29014 Weld County Road 52, Kersey, Colorado 80644.

Whereas, Operator or an affiliate has the right develop the mineral estate within and underlying the N2NW of Section 36, Township 5 North, Range 64 West pursuant to State of Colorado Oil and Gas Lease 80/55555-S, dated September 17, 1980, recorded on August 9, 1984 in Book 1039 at Reception No. 1976965 in the records of the Weld County Clerk and Recorder, and may acquire rights to develop the mineral estate in other lands ("Leased Lands").

Whereas, Operator may desire to access the mineral estate within and underlying the Leased Lands by drilling one or more oil and gas well(s) with a surface location being located in a Greater Wattenberg Area drilling window, as such term is defined in COGCC Rule 318(A)(I)(A), or one or more horizontal wells with a surface location in the S2NW of Section 36, Township 5 North, Range 64 West, with a bottomhole location in the Leased Lands ("Well(s)").

Whereas, Owner and Operator wish to memorialize their agreement concerning location of oil and gas facilities, including but not limited to well sites, pipelines, batteries and other facilities or property of Operator associated with the Well(s) ("Oil and Gas Facilities") and access and the payment for damages to the surface of the Lands in connection with the drilling, construction, completion, recompletion, reworking, re-entry of any Well(s) and Oil and Gas Facilities ("Oil and Gas Drilling Operations"), and production, maintenance and operation of any Well(s) and Oil and Gas Facilities ("Production and Maintenance Operations"). Production and Maintenance Operations and Oil and Drilling Operations shall collectively be known as "Oil and Gas Operations".

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

1. Prior to the commencement of Oil and Gas Drilling Operations for any and each Well(s), Operator shall pay Owner the sum of XXXXXXXX unless otherwise agreed in a writing signed by Owner and Operator, such payment being full and acceptable compensation to Owner for use of the Lands as herein provided and resulting damage through loss of use, and Operator shall make an additional payment of XXXXX to Owner in the event that Operator conducts any Oil and Gas

Drilling Operations on the surface of the Lands between September 1 and February 15 of any year, such payment being compensation to Owner for loss of hunting lease income for such year and such payment being the sole and full restitution for any damages affecting Owner's hunting operations ("Hunting Damages"), and together, any and all such payments shall be known as the "Damage Amount". Upon such Damage Amount payment to Owner, Owner hereby grants to the Operator and its affiliates access to, the normal use of, and the right to occupy and develop a portion of the Lands for Oil and Gas Operations associated with any and each Well, for as long as use of such Lands in such manner is required by Operator or its affiliates in connection with operations on or under the Lands or Leased Lands. Such Damage Amount payment(s) shall constitute payment in full by Operator and its affiliates for such access to, the normal use of, the right to occupy and develop, and to conduct Oil and Gas Operations on such portion of the Lands, and all normal damages to Owner and the Lands thereby, including, but not limited to, damages to growing crops, damages to the Lands associated with the drilling, construction, completion, recompletion, reworking, re-entry, production, tank battery location, operation and maintenance of any and each Well, and, as applicable, damages to Owner's hunting operations ("Normal Damages"). The Damage Amount for any Damage Amount payment to Owners made subsequent to December 31, 2012, shall be indexed for inflation as measured by the percent change in the consumer price index for the Denver-Boulder-Greeley subject area as measured by the United States Bureau of Labor Statistics, measured annually. Access to, the normal use of, and the right to occupy the Lands includes, but are not limited to, reasonable and customary ingress, egress, rights-of-way, construction of all access roads, preparation and use of the drillsite area, preparation and use of reserve pits, and construction, installation and maintenance of production equipment and facilities such as flowlines, gas pipelines, separators, tank batteries and other equipment or facilities necessary for the production, transportation and sale of oil and/or gas therefrom, and the drilling and fracing of a wellbore, and Normal Damages includes any damage resulting therefrom. Normal Damages, and any Damage Amount payment, shall not be considered as payment for any Additional Damage (as defined in paragraph 2 of this Agreement) or any indemnity obligation of Operator (as provided in paragraph 4 of this Agreement).

In consideration of payment of the Damage Amount by Operator, Owner does also hereby grant, assign, transfer and convey unto Operator and its affiliates the Lands for an easement and right of way to utilize the subsurface strata under the Lands in exploring for and producing oil, gas and other minerals located on or under the Lands or when necessary to access oil, gas and other minerals located on Leased Lands (such grant of easement or right of way not being a grant of easement or right of way burdening the adjacent lands). Said easement and right of way will continue for as long as use of the easement and right of way is required by Operator or its affiliates in connection with operations on or under the Lands or to access the oil, gas and other minerals located on Leased Lands.

2. If by reason of Operator's operations, there is damage to Owner's personal property located on the Lands or there is damage to the surface of the Lands, other than Normal Damages described in paragraph 1 of this Agreement, which are caused by the Operator or an unreasonable use of the surface of the Lands by Operator that is not associated with reasonable and normal drilling, completion, recompletion, reworking, re-entry, production, maintenance and operation of the Well, such as, but not limited to, damage to the water rights of Owner in the Lower Latham Ditch, structures, fences, culverts and cement ditches ("Additional Damage"), such Additional Damage shall be repaired or replaced by Operator or Operator shall promptly pay Owner the actual value of any of Owner's property so damaged.

3. Owner and Operator understand and agree that Operator has a right to utilize the portion of the surface of the Lands which are located within a Greater Wattenberg Area drilling window, as such term is defined in COGCC Rule 318(A)(1)(A), to access the mineral estate under the Leased Lands. Owner and Operator acknowledge and agree that both would prefer Operator to utilize the surface of that portion the Lands lying in the S2NW of Section 36 to access the mineral estate in the Leased Lands, but that title to the surface estate of that portion of the Lands lying south of a line 293 feet south of and parallel to the south line of the N2NW of Section 36 ("Uncertain Lands") is uncertain, such that Owner may not currently have marketable title to the Uncertain Lands. Upon resolution of title to the Uncertain Lands in favor of Owner, Operator shall conduct all Oil and Gas Operations in the area set forth in Schedule A attached hereto which reflects the agreed upon area and access for Oil and Gas Operations associated with any and each Well.
4. Operator shall indemnify, hold harmless, and defend Owner, from any and all claims, demands, damages, and causes of action made by any third party against Owner for damage resulting to such third party from any Oil and Gas Operations conducted by Operator or its affiliates on the Lands during the term of this Agreement, except for damages caused by willful or wanton acts of Owner or any third party and except for claims made by third parties regarding Owner's hunting operations ("Indemnity Obligation").
5. In consideration of payment of any Damage Amount, Additional Damages, and any payment of Indemnity Obligation by Operator to Owner, Owner, for itself and its successors and assigns, shall and does hereby release, relinquish and discharge Operator, its affiliates, successors and assigns from all claims, demands, damages and causes of action that Owner may have against Operator due to any Oil and Gas Operations conducted on the Lands.
6. In conducting operations on the Lands, Operator shall:
  - A. Limit the size of each wellsite to approximately 300 feet by 350 feet during any drilling, completion, recompletion or workover operations, and each wellsite shall be an area of not greater than a 150 foot radius from the well site in size during other periods. The area required for the tank battery location associated with each well shall be limited to an area of 75 feet by 150 feet in size upon completion of construction. Access roads shall be limited to approximately 30 feet in width during drilling, completion, recompletion and workover operations. The permanent access roads to the well head and tank battery location shall be limited to 20 feet in width and Operator shall maintain such roads in good repair and usable condition.
  - B. Utilize a closed loop drilling operation so there will be no excavated pits.
  - C. Reclaim the wellsite as nearly as practicable to its original condition and, if the location is in pasture, reseed the location with native grasses. Weather permitting, reclamation operations shall be completed within 3 months following drilling and subsequent related operations, unless Operator and Owner mutually agree to postponement because of crop or other considerations.
  - D. Use its best efforts to keep the well and battery sites free of weeds and debris.

- E. Erect a temporary fence which shall surround any drillsite when any livestock are present on the Lands and remove such fence after completion of drilling operations or upon removal of livestock, unless otherwise specified in writing by Owner.
- F. Erect a permanent fence around any battery facilities and consult with Owner regarding the visual aesthetics of such fence, and install a gate regulating access to such battery facilities.
- G. Paint any permanent surface installations a color consistent with COGCC regulations or single earth tones, in consultation with Owner.
- H. Prior to conducting any Oil and Gas Drilling Operations, widen the current access point to the current access road on the Lands on the eastern portion of Weld County Road 59 to a width appropriate for vehicles associated with Oil and Gas Drilling Operation traffic.

7. Colorado Revised Statutes and COGCC Rules.

- A. Operator shall provide Owner written notice ten (10) business days before commencement of Oil and Gas Drilling Operations for any Well, and shall at that time provide the location of such Well, associated roads, production facilities, notice of the commencement of Oil and Gas Drilling Operations, and the Operator's name and contact information. Owner acknowledges that by execution and adherence to the terms of this Agreement, and compliance with the notice provision, Operator shall have complied with, and Owner therefore and hereby waives, the statutory notice requirement provided by C.R.S. § 34-60-106(14), the Advance Notice requirements of COGCC Rule 305(e)(1)(B), and the Notice of Subsequent Well Operations of COGCC Rule 305(e)(4) with respect to all Oil and Gas Operations for any such Well.
- B. For any and all Well(s), Operator shall submit a Form 2A to the COGCC as required by COGCC Rule 305(b)(1) and 305(e)(1)(A) and shall provide a copy of such Form 2A to Owner, and such form shall reflect the provisions of this Agreement, provided that, to the extent that such Form 2A provides for development of any Well(s) in a manner substantially similar to that provided for in this Agreement, Owner hereby waives any right to, and shall not request the COGCC to, extend the twenty (20) day comment period provided by COGCC Rule 305(c), and hereby waives the Landowner Notice requirement of COGCC Rule 305(e)(1)(A) with respect to Oil and Gas Operations for any such Well.
- C. Operator shall provide notice to Owner not less than thirty (30) days before any actions are to be undertaken when a Well is to be plugged and abandoned or when production facilities are to be permanently removed on the Lands, and as such, Owner hereby waives the final reclamation notice requirement of COGCC Rule 305(e)(6).
- D. Owner agrees that by negotiation and execution of this Agreement, Operator has consulted in good faith with Owner regarding location of roads, production facilities, and well sites and other Oil and Gas Facilities, and has provided for reclamation and abandonment, with respect to all Oil and Gas Operations and the Well(s). Operator has provided Owner a diagram of the proposed drillsite, topsoil management, and location of Oil and Gas Facilities for the Well(s), as provided by COGCC Rule 306(a), and as such,

Owner hereby waives the consultation requirement of COGCC Rule 306(a) as provided by COGCC Rule 306(a)(3).

- E. To the extent that state law or regulations require written waiver by Owner evidencing Operator's compliance with the provisions of this paragraph 7, and to the extent that Operator complies with the provisions of this paragraph 7, Owner agrees to execute a separate waiver for filing with the COGCC if requested by Operator or its affiliates which such waiver would apply to all Oil and Gas Operations limited to any and each Well proposed by Operator or its affiliates pursuant to and in compliance with this Agreement.
  - F. Owner acknowledges and agrees that by execution and adherence to the terms of this Agreement, Operator's Oil and Gas Operations have and will accommodate the Owner by minimizing intrusion upon and damage to the surface of the Lands by selecting alternative locations for wells, roads, pipelines, and production facilities which will reduce or mitigate the impacts of the Oil and Gas Operations on the surface of the Lands as to any Well(s) drilled, as set forth in C.R.S. Section 34-60-127(1)(a) and (b).
8. When the word "Operator" is used in this Agreement, it shall mean Pico Niobrara, LLC and it shall include its employees, agents, affiliates, assignees, contractors, subcontractors, purchasers, and/or successors.
  9. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties, and may be executed in counterparts. This Agreement shall be a covenant running with the land. All rights and obligations under this Agreement shall run with the Lands and shall inure to the benefit of and be binding upon the heirs, successors, or assigns of each party. Nither party hereto may assign this Agreement without the prior written consent of the other party, which such consent shall not be unreasonably withheld.
  10. Owner shall not disclose the amount of consideration paid hereunder by Operator or any other terms herein, and Owner shall keep such information confidential and shall not disclose such information without the advance written consent from Operator. Operator may record a memorandum evidencing the evidence of this Agreement.
  11. All communications regarding this Agreement and all notices given under this Agreement shall be via certified mail or hand delivery to the Owner and to Operator to the following individuals and addresses:

Owner: **Marshal Quinter Fike and Suzette Fulton-Fike**  
3850 James Canyon Drive  
Jamestown, Colorado 80455

Operator: **Pico Niobrara, LLC**  
Attention: Max Webb  
7979 Ivanhoe Avenue, Suite 300  
La Jolla, California 92037

**Pico Niobrara, LLC**  
Attention: Rob Ayling

7979 Ivanhoe Avenue, Suite 300  
La Jolla, California 92037

With cc to: Paul E. Mendell  
402 Orofino Drive  
Castle Rock, Colorado 80108

IN WITNESS WHEREOF, the parties have executed this Agreement to be made effective as of the day and year first written above.

OWNER:

OPERATOR:

*MP*  
Marshal Quinter Fike

*Max Webb*  
Pico Niobrara, LLC  
By: Max Webb, Chief Financial Officer

*Suzette Fulton Fike*  
Suzette Fulton-Fike

**ACKNOWLEDGEMENTS**

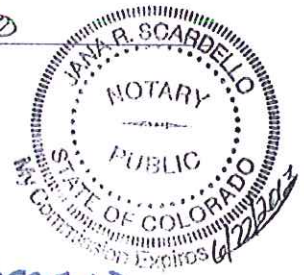
STATE OF COLORADO        )  
  )  
COUNTY OF WELD            )

The foregoing instrument of writing was acknowledged before me on this 16 day of August, 2012 by Marshal Quinter Fike and Suzette Fulton Fike for the uses and purposes stated herein.

Witness my hand and seal:

*Janet R. Scardello*  
Notary Public

My Commission Expires: 6/22/2013



~~STATE OF \_\_\_\_\_ )  
  ) (SEE ATTACHED ACKNOWLEDGMENT)  
COUNTY OF \_\_\_\_\_ )~~

~~The foregoing instrument of writing was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2012 by \_\_\_\_\_ for the uses and purposes stated herein.~~

Witness my hand and seal:

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

State of California }  
 County of SAN DIEGO }  
 On 20 AUG 2012 before me, PATRICIA ANN BOYLE, NOTARY PUBLIC  
Date Here Insert Name and Title of the Officer  
 personally appeared MAX WEBB  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Patricia Ann Boyle  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: SURFACE AND SUBSURFACE USE AGREEMENT  
 Document Date: 16 AUG 2012 Number of Pages: SEVEN (7)

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: MAX WEBB Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): CFO  Corporate Officer — Title(s): \_\_\_\_\_

Individual  Individual

Partner —  Limited  General  Partner —  Limited  General

Attorney in Fact  Attorney in Fact

Trustee  Trustee

Guardian or Conservator  Guardian or Conservator

Other: \_\_\_\_\_  Other: \_\_\_\_\_

Signer Is Representing: PICO Signer Is Representing: \_\_\_\_\_

NUBBARA, LLC

**SCHEDULE A**

**OIL AND GAS FACILITY LOCATION**  
**FOR WELLS IN**

**S2NW, Section 36, Township 5 North, Range 64 West, 6<sup>th</sup> P.M., Weld County,**  
**Colorado**