

# Surface Use and Damages Agreement Between

Comet Ridge (USA) Inc. and Victor Morton & Sons, Inc.

**Referenced Lands:** Township 6 North, Range 86 West

Section 17: N/2NW/4, SE/4  
Section 18: N/2NE/4, less that portion of the land owned by the Meyers family in the NW/4NW/4NE/4, W/2SE/4, S/2NE/4 (50% ownership) and E/2SE/4 (50% ownership)  
Section 19: W/2NE/4, N/2SE/4 and E/2NE/4 (50% ownership)  
Routt County, Colorado

**First Well Name:** Coal View Unit #1-18 Well (aka, Coal View Unit 18-14)

**First Well Location:** Township 6 North, Range 86 West

Section 18: SE/4 (At a mutually agreeable location comprising a rectangle of 220 feet x 350 feet)  
Routt County, Colorado

THIS SURFACE USE AND DAMAGES AGREEMENT is made effective as of the 22<sup>nd</sup> day of September, 2006 by and between Comet Ridge USA, Inc., hereinafter called "Comet Ridge" whose address is 600 17<sup>th</sup> Street, Suite 600-S, Denver, Colorado 80202-5402 and Victor Morton & Sons, Inc., whose address is 39440 County Road 68A, Steamboat Springs, Colorado 80487-9508 hereinafter called the "Surface Owner".

Comet Ridge proposes to conduct drilling operations upon the above described lands (the "Referenced Lands") including the Coal View Unit #1-18 well (the "First Well") at the above referenced location (the "First Well Location") and, thereafter, Comet Ridge proposes to conduct production operations thereon. Production Operations are defined as setting tank batteries, installing flow lines, gas pipelines, separators, treaters, tank batteries, and any other equipment, or facilities necessary or convenient for the production, transportation, gathering, transportation and sale of oil and/or gas from the well and the operation thereof. By this instrument Comet Ridge and Surface Owner set forth their agreement concerning the surface damages resulting from the drilling and completing of the First Well and subsequent wells (collectively, the "Wells") and subsequent Production Operations from each well on the Referenced Lands.

NOW, THEREFORE, in consideration of the sums stated below, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Normal Damages:** Prior to commencement of Well Activities on each Well, Comet Ridge shall pay Surface Owner the below stated sums as full settlement and satisfaction of all damages growing out of, incident to or in connection with the Well Activities and Production Operations of each Well. Well Activities are defined as construction of the access road and well pad, including mud, reserve and water pits, drilling and completion operations. Such sums shall include but shall not be limited to:

- a) [REDACTED] per well pad (regardless of the number of Wells drilled from such pad) in location and configuration to be agreed upon by the parties with Surface Owner to be provided a copy of the well pad and road use survey and for use of the drill site areas (not to exceed four acres per well pad in size, exclusive of access roads) and for conducting Well Activities and Production Operations on the Wells; and
- b) construction of new access roads for which Comet Ridge will pay [REDACTED] per rod with Comet Ridge and Surface Owner to mutually agree on the location of such new roads prior to the construction thereof with Surface Owner to be provided a copy of the road survey which shall serve as the basis for the payment calculation.

2. **Annual Payments:** In addition to the amounts specified above, Comet Ridge shall pay Surface Owner annually, on the date specified in Paragraph 2. d) below, additional consideration as follows:

- a) [REDACTED] for up to three tanks per well pad plus [REDACTED] for each additional tank per well pad;
- b) [REDACTED] for the use of Surface Owner's existing roads and any other roads constructed by Comet Ridge as provided for herein for which Surface Owner shall allow an access to the Wells sufficient for vehicles to pass in the course of normal production operations;
- c) [REDACTED] for the use of each well pad; and
- d) In the event the sum of the combined payments provided for in a, b and c above for road use and for all pads and tanks is less than [REDACTED] in any calendar year, an annual amount equal to the difference between the sum of the payments provided for in a, b and c above and [REDACTED] shall be remitted to Surface



Owner so that Surface Owner is pre-paid a minimum of [REDACTED] annually for years in which Comet Ridge uses any portion of the Referenced Lands. Such payment shall be due within five (5) days of the first use of the Referenced Lands by Comet Ridge and that date of first use will be considered the anniversary date upon which the subsequent annual payments or the minimum payment, whichever is the greater, shall be paid.

3. **Abnormal Damages:** If, by reasons directly resulting from the Well Activities and/or Production Operations of Comet Ridge, there is damage to real or personal property upon the Referenced Lands which is not associated with the usual, convenient and customary operations, such as, but not limited to, operations (including all acts or omissions of drilling contractors and water supply trucks) which are below the industry standards in Routt County, in violation of the applicable permits to be issued by Routt County for the Well Activities or which are outside of mutually agreed locations for roads, drill sites, flow lines, separating equipment, storage tanks, or create damage to livestock, structures, fences culverts, cement ditches, and irrigation systems, Comet Ridge shall promptly repair such damage and pay reasonable compensation to Surface Owner.

4. **Notice of Heavy Equipment Operation:** Prior to the start of construction of well pads, access roads, flow lines, tank batteries, gas sales lines, other associated production facilities on the Referenced Lands, Comet Ridge's representative will meet and consult with Surface Owner or Surface Owner's representative in regards to coordinating the movement of such equipment into and out of the location.

5. **Waiver of Thirty Day Notices:** Surface Owner hereby waives the thirty (30) day advance notices required by the COGCC Rule 305, as amended, and agrees to execute a separate waiver for filing with the COGCC if requested by Comet Ridge as to the First Well.

6. **Notice to Tenants:** With respect to notices required to be given under COGCC's Rule 305, it shall be the responsibility of the notified Surface Owner to give notice of the proposed operation to the tenant farmer, lessee or other party that may own or have an interest in any crops or surface improvements that could be affected by such proposed operations. As a courtesy to Surface Owner and Tenant(s), Comet Ridge will attempt to notify said third party prior to commencement of any operation, but shall be under no obligation to do so.

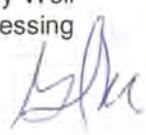
7. **Topsoil Reclamation:** All topsoil removed during drill site preparation and reserve and water pits construction, (but not including buried flow lines and gas pipeline installations, which will be accomplished by trenching, not to exceed 18 inches in width) shall be segregated and kept separate from subsoil. Prior to replacing topsoil, bentonite drilling mud and fluids remaining in pits as a result of the drilling operations shall be removed and/or may be spread on the surface if so desired by Surface Owner. After subsoils have been replaced, topsoil shall be restored to its original location and condition as nearly as possible in the course of restoration activities. Comet Ridge shall replace all previously existing natural grasses and take all reasonable steps necessary to assure there is no soil erosion resulting from the activities and/or operations of Comet Ridge caused by the wind.

8. **Site Restoration:** Upon completion of any activity by Comet Ridge, the premises shall be restored to its original condition as nearly as reasonably practical. Adequate road base material shall be applied to improve field access roads and tank battery sites where necessary. All surface equipment and materials associated with the activity, such as concrete, plastic, pipe, cable, and similar waste materials and refuse, shall be removed within thirty (30) days of the completion of any separate Well Activity. Weather permitting, reclamation and restoration operations shall be completed as soon as is feasible following drilling and subsequent related operations, unless Comet Ridge and Surface Owners mutually agree to postponement because of crops or other considerations.

9. **Cropland Drillsite Locations:** Comet Ridge may in its discretion postpone commencing drilling operations on wells located within croplands on the Referenced Lands until such crops are removed or an earlier start is agreed to by the mutual consent of the parties. All crop damages will be paid according to prevailing local rates as determined by the United States Department of Agriculture published hay market rates for northwest Colorado.

10. **Mud, Reserve and Water Pits:** Comet Ridge agrees to use reasonable efforts to minimize or eliminate the use of oil or mineral based mud, reserve and water pits upon the Referenced Lands, subject to the availability of equipment; the characteristics of the pad location and production from each Well and the economics of alternative operational procedures. Surface Owner shall be kept advised and consulted with as to the conditions pertinent to each pit decision made by Comet Ridge. In situations where pits are used by Comet Ridge, except during the conduct of actual Well Activities, such pits shall be adequately fenced and netted with such fencing and netting to be regularly maintained.

11. **Seasonal Operations:** To the extent reasonably possible, Comet Ridge will not conduct any Well Activities during the period of September 1 through November 30 of any year and, as to accessing



producing Wells during this period, such access shall be limited to the hours of 10:00 AM through 3:00 PM.

**12. Prohibitions:** The possession of firearms, alcohol, and dogs or the use of animal calls and air horns by employees, contractors or representatives of Comet Ridge upon the Referenced Lands shall be prohibited. No hunting or fishing shall be allowed. Access to the Referenced Lands shall be limited to roads only and no individuals other than those conducting the business of Comet Ridge shall be allowed upon the Referenced Lands.

**13. Gates and Livestock:** The employees, contractors or representatives of Comet Ridge shall give due consideration to livestock upon the Referenced Lands and shall close all gates after use or shall post a gate guard at any such gate that is opened for a period longer than that necessary to allow for immediate traffic to pass so as to prevent any livestock from passing through the gates. Comet Ridge will be allowed their own key for all gates accessing the wellsite(s).

**14. Road Maintenance:** Comet Ridge shall maintain existing and newly constructed roads to minimize excessive dust, weeds and avoid erosion. Areas prone to wear and tear shall be maintained with adequate road base and gravel of not more than three (3) inch diameter except in areas adjacent to crops where ¾" maximum diameter road base shall be used. Road markers shall be installed to assure effective road location identification. Comet Ridge shall conduct an annual clean-up each year after Spring mud season to protect farmed fields. Water bars, culverts and double ditching shall be used to protect surface and shall be maintained. Such construction and maintenance and dust and weed control shall be done in consultation with Surface Owner.

**15. Successor, Assigns and Agents:** This Surface Damage Agreement shall be binding upon and inure to the benefit of the parties hereto, their agents, successors, and assigns and may be executed in counterparts and/or on different dates, each of which shall be deemed to be an original for the purpose hereof. Provided, however, an assignment of this Agreement by Comet Ridge shall be subject to the written consent of Surface Owner which consent shall not be unreasonably withheld. Reasonable grounds for not approving an assignment shall include lack of a State and/or County bond by proposed assignee, a record of non-compliance or regulatory citations from State of Colorado or Routt County authorities or the lack of financial capability of proposed assignee to perform the obligations set forth herein. The failure of Surface Owner to provide a written response to a request for its written consent within forty-five (45) days of its receipt of notice from Comet Ridge of a proposed assignment shall be deemed a consent to such assignment.

**16. Damages and Indemnity:** Comet Ridge on behalf of itself and all employees, contractors and representatives conducting work upon the Referenced Lands pursuant to this Agreement agrees that it will be fully and solely responsible to Surface Owner for damages and indemnity as herein set forth.

a) **Damages.** Comet Ridge shall be responsible for all damages directly or proximally caused by its operations to persons, property, including but not limited to gates, bridges, roads, culverts, cattleguards, fences, dams, water bars, dikes, natural vegetation, grain and grain fields, pastures, hay meadows, stock watering facilities, livestock and all other improvements.

Should any fences be destroyed or damaged, directly or proximally caused by the operations of Comet Ridge, they shall be repaired by Comet Ridge within seventy-two (72) hours of notification by Surface Owner. Alternatively, Surface Owner may perform the repair after prior notice to Comet Ridge and Comet Ridge will reimburse Surface Owner for actual time and materials with time to be paid at [REDACTED].

b) **Indemnity.** Comet Ridge agrees to indemnify Surface Owner and Surface Owner's agents and employees and hold them harmless against any loss, liability, expense or damage incurred by third persons or damage to property arising out of or resulting from Comet Ridge's actions or inactions on the Referenced Lands, including violation of law, order, rule or regulation, except any such injury or death caused directly by Surface Owner's gross negligence or willful misconduct.

**17. Colorado Oil and Gas Conservation Commission:** Comet Ridge agrees to comply with all the COGCC rules and regulations and applicable Routt County resolutions and permits regarding the activities proposed herein.

**18. Interpretation:** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Colorado, except to the extent that it shall be necessary to comply with federal laws, rules or regulations. No covenants or conditions not expressed in the Agreement shall effect or be effective to interpret, change or restrict this Agreement. No change or amendment of any of the provisions hereof shall be binding unless in writing executed by both parties hereto, nor shall any waiver be deemed effective unless executed in writing.



**19. Additional Provisions:**

a) Liens. Comet Ridge shall, at its sole cost, keep the property free and clear of liens and encumbrances resulting from its activities hereunder.

b) No Warranty. This Agreement is in no way a guarantee or Warranty of Surface Owner's ownership interest.

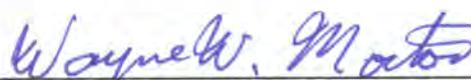
c) Additional Payments. As further consideration to Surface Owner for the execution of this Agreement, at the time of such execution Comet Ridge agrees to remit to Surface Owner a payment in the amount of [REDACTED] as a one time signing bonus. In addition, for each year during which Comet Ridge conducts Well Activities during the period of September 1 through November 30, Comet Ridge agrees to remit to Surface Owner a compensation payment for potential loss of hunting revenue in the amount of [REDACTED]. These hunting compensation payments shall be remitted on September 1 of each year if Well Activities are then being conducted or within five (5) days of the commencement of Well Activities if commenced after September 1 and before December 1. No hunting compensation payment shall be made in any year when Well Activities are not conducted at some time during the period of September 1 through November 30 in such year. These payments shall be in addition to the payments provided for in Paragraphs 1 and 2 above.

d) Pumping Units. Comet Ridge shall install mufflers on pumping units and use electricity to power pumping units located on the Referenced Lands, subject to Surface Owner cooperating in granting necessary easements for installation of power lines.

e) Default. In the event of default by Comet Ridge of the terms and conditions of this Agreement or the failure by Comet Ridge to remit any payment in the amount and manner provided for herein, Surface Owner shall notify Operator in writing, and Operator shall have thirty (30) days after the receipt date of such notification within which to cure such default and/or make the required payment. In the event Operator does not cure the default within the time specified, the rights of Comet Ridge hereunder shall be deemed suspended, including the right of ingress and egress, until such default has been cured. Surface Owner shall not be liable for any loss or damage to Comet Ridge occasioned by the Surface Owner's enforcement of this provision.

f) Execution Deadline. If this Agreement is not executed by Surface Owner on or before September 22, 2006, at the option of Comet Ridge, the terms and provisions hereof shall terminate and be of no force or effect.

Signed:  Date: September 20, 2006  
Gary J. Mabie, Vice President - Operations  
Comet Ridge USA, Inc

Signed:  Date: 9-20-06  
Wayne W. Morton, President  
Victor Morton & Sons, Inc.