

MEMORANDUM OF SURFACE USE AGREEMENT

This Memorandum of Surface Use Agreement ("Agreement") is made and entered into effective this ^{July} 31 day of 2013, by and between **David and Lynn McDonough** and **The David M. McDonough Trust**, with an address of **307 N. County Line Rd 1, Johnstown, CO 80534** and **Judith Elaine Folley Family Trust** with an address of **1608 E. County Line Rd 72 Wellington CO 80549** (hereinafter collectively referred to as "Owner" or "Surface Owner") and **Kerr-McGee Oil & Gas Onshore LP**, a Delaware limited partnership, with an address of **1099 18th Street, Suite 1800, Denver, CO 80202** (hereinafter referred to as "Operator") and **Kerr-McGee Gathering LLC**, ("KMGG"), a Delaware limited liability company, with an address of **1099 18th Street, Suite 1800, Denver, Colorado 80202** (hereinafter referred to as "KMGG").

WITNESSETH:

WHEREAS, Owner owns the surface estate described on Exhibit A attached hereto (the "Lands") as well as the mineral estate under the Lands; and

WHEREAS, Owner has developed portions of the Lands and has plans to develop other portions of the Lands which plans may include planned communities for residential, commercial, agricultural, industrial and other development; and

WHEREAS, the parties have, on this date, entered into an Oil and Gas Lease covering the mineral estate as shown on Exhibit A.

WHEREAS, Operator plans to drill oil and gas wells on the Land at different times pursuant to Oil and Gas Leases from Operations Areas in accordance with the terms of this Agreement ("Wells").

WHEREAS, the parties wish to enter into an agreement concerning the use by Operator of portions of the Lands for the purposes of drilling, completing, and operating oil and gas wells on the Lands consistent with Owner's existing and planned development of the Lands.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Right of Use.** Owner hereby gives and grants to Operator, its agents, employees, drilling contractors, and related service companies, subject to the terms of this Agreement, the non-exclusive right to enter upon and use the Lands for the purpose of drilling, completing, and producing one or more oil and gas wells at legal locations or at such exception locations as are approved by the Colorado Oil & Gas Conservation Commission ("COGCC"), together with rights-of-way across the Lands and adjacent lands owned by Owner necessary to construct and maintain one or more access roads, well sites, tank batteries, and pipelines in connection with the oil or gas wells to be drilled by Operator upon the Lands, all in accordance with, and subject to the limitations set forth in, this Agreement. The rights of Operator to use the Lands as set forth herein are non-exclusive, and Owner reserves the right to use all access roads, and all surface and sub-surface uses of the Lands, and to grant successive easements on or across the Lands on such terms and conditions as Owner deems necessary or advisable, provided that Owner's use and all other uses authorized by Owner do not unreasonably interfere with the operations of Operator.

2. **Notification and Consultation.**

(a) Attached hereto is an Exhibit B that depicts generally three (3) oil and gas operations areas in which Operator will conduct its operations ("Oil and Gas Operations Areas"). Consistent with the Colorado Oil and Gas Regulations and prior to commencing any operations or initiating the drilling of any well within the Oil and Gas Operations Areas, Operator shall notify Owner of its plans to include the location of each road, pipeline, power line, tank battery, or other facility to be placed in the Oil and Gas Operations Area(s) in which operations are to be conducted. Except as otherwise provided in this Agreement with respect to roads, power lines, underground powerlines, transformers, electrical boxes,

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cabinets, flowlines, water pipelines and pipelines, all of Operator's activities shall be restricted to the Oil and Gas Operations Areas and Owner shall not occupy any portion of the Oil and Gas Operations Areas for any purpose, it being specifically agreed that the Oil and Gas Operations Areas are for the exclusive use of Operator. No gas treatment or gas processing facility shall be placed on the Lands, other than standard wellsite separation, artificial lift equipment and dehydration equipment.

(b) To the maximum extent possible, Operator's access to its Oil and Gas Operations Areas and the placement of pipelines and power lines (to the extent they are located outside of the Oil and Gas Operations Areas) will be along the section lines of the Lands. Owner recognizes that Operator will have to construct access roads, pipelines and power lines from the section lines of the Lands to the Oil and Gas Operations Areas. The location of such access roads, pipelines and power lines will be done in consultation with Owner.

(c) Provided mutually acceptable alternate locations are agreed upon by Owner and Operator, Owner shall have the right to require Operator to relocate any roads, pipelines, power lines, or other surface or underground facilities (excluding any well) upon ninety (90) days prior written notice to Operator in the event that such relocation is necessary to Owner's use of the Lands so long as the alternative location is technologically and operationally feasible. All relocation expenses will be borne by Owner and Operator will not be required to move any of its facilities until provision has been made for the payment of such expenses to the reasonable satisfaction of Operator.

3. **Compensation.** As compensation for surface damages for use of Owner's surface estate, Operator shall pay to Owner the following:

(a) An agreed upon amount for each vertical or directional well in each Oil and Gas Operations Area for the drilling of wells and the location of related facilities upon the Oil and Gas Operations Areas which payment includes the access road, transformers, electrical boxes, cabinets, flowlines, and water pipelines to the Oil and Gas Operations Areas, payable prior to commencement of surface disturbing activities.

(b) If applicable, the fees and compensation payable by Operator to Owner for the installation and location and operation of any compressor on the Lands shall be negotiated in good faith by Owner and Operator under a separate agreement.

(c) Provided Owner is in compliance with this Agreement, Operator agrees that it will not object, oppose or seek to prevent Owner from (i) obtaining any required permits to develop the Lands for such residential, commercial, industrial and other uses of any kind as Owner determines from time to time, or (ii) so developing the Lands, subject to Operator's rights under this Agreement. Operator agrees to execute and deliver letters of support of and non-objection to such development by Owner as may be requested by Owner from time to time. Likewise, provided Operator is in compliance with this Agreement, Owner will not oppose any permit application Operator submits to the COGCC or any state or local entity having jurisdiction of some or all of Operator's activities hereunder or under the Oil and Gas Lease of even date so long as said application or permit is consistent with this Agreement, and, if necessary, Owner will reflect its support to applicable local government designees ("LGDs") concerning Operator's activities on the Lands.

(d) Owner and Operator agree that once the Oil and Gas Operations Areas have been established in accordance with Section 5 hereof, Owner, with the exception of the setback requirement of COGCC rule 603.a.(1), shall automatically be deemed to waive the setbacks provided for in COGCC rules including, but not limited to, the setback and other requirements of rules 603.a.(2), and 604. of the rules and regulations of the COGCC relating to property lines and high density and designated outside activity areas, as they may be amended from time to time. Owner further and similarly shall be deemed to waive 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 and assigns, to explore for and produce the oil and gas in accordance with this Agreement. Operator or its successors and 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 over the oil and gas operations contemplated hereby including the City. Once the Oil and Gas Operations Areas have been established, as set forth in Section 5 hereof, 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 Owner will provide Operator or its successors and assigns with any and all written support they may reasonably require to obtain permits from the COGCC or any local jurisdiction. In consideration of the foregoing, Operator waives its rights to object to future development of the Lands based upon any state or local setback requirement that regulates how close such future development may encroach upon Operator's facilities, and further agrees that Owner may cite the waiver in this paragraph in order to obtain an exception or variance to setback requirements from any state or local governmental body having jurisdiction over the Lands.

4. Road Construction and Use. Subject to Section 2 above, any roads constructed or used by Operator on the Lands shall be constructed or used to the following specifications:

(a) To the maximum extent reasonably possible, Operator will use existing roads designated by Owner for its operations if such use is operationally and economically feasible in Operator's judgment reasonably exercised.

(b) The surface of all roadways shall be made of compacted gravel, and shall comply with all regulations or laws applicable to such roadways. All interior roadways, within the Oil and Gas Operations Areas, shall not exceed thirty (30') feet in width for traveled surface. All roadways along the section lines of the Lands shall be thirty (30') feet or more in width for traveled surface. Operator shall control dust from all private and public (subject to COGCC and local governmental approval) roadways through the application of an appropriate dust suppressant. Any roads constructed by Operator shall be improved as may be necessary and Owner and Operator agree that once surface development begins, the parties will consult with each other and agree on how the roads used in the operations of the oil and gas activities will be merged into the development roads. Any shared roads with the development and required upgraded material for roads and transitions to the standard oil and gas roads (streets, aprons and sidewalks) will be paid for by the Owner or future developers of the Lands.

(c) If requested by Owner, access to the Lands of Owner from any public road, or from the land of any adjoining Landowner, shall be controlled by a swinging metal gate in addition to a cattle guard.

(d) Culverts shall be placed in low areas for proper drainage.

(e) Through diligent communication, operator will exercise its best efforts to assure that no off-road travel is permitted and particularly no off-road travel which has the effect of widening the road or area of damage occurs.

(f) The use and construction of roads by Operator on the Lands is a non-exclusive use, and Owner may allow other parties to use said roads and make a charge therefor. However, Operator shall have the right to assess other non-agricultural users of the roads (except for Owner) for their share of maintenance work performed by Operator. Owner shall have no responsibility for road maintenance.

(g) Owner may lock gates across its private roads, provided that Operator shall have the right to place its own locks on such gates.

(h) No roads on the Lands shall be used by Operator for access to lands not subject to the Lease without a separately negotiated agreement.

5. Oil and Gas Operations Areas. The Three (3) Oil and Gas Operations Areas depicted on Exhibit B shall be limited to that number and such Oil and Gas Operations Areas will be utilized for drilling, completion and reworking/recompleting activities. During these activities, these 3 Oil and Gas Operations Areas shall comprise and impact approximately twenty (20) total acres of the Lands.

Additionally, within each of the 3 Oil and Gas Operations Areas, there shall be easements referred to below, including temporary waterline easements that shall connect each drilling pad(s) located within each Oil and Gas Operations Areas. Further, there shall be a two-hundred foot (200') setback around each Permanent Oil and Gas Operations Area as that term is defined below. The setback area shall be subject to the same limitations as the Ancillary Operations Area.

One (1) of the three (3) Oil and Gas Operations Area will be larger in size to accommodate centralized completion operations areas. This larger Oil and Gas Operations Area is located in the SENE of the Lands (the "SENE Operations Areas"), and shall consist of no more than ten (10) acres for the area during completions and reworking/recompletions activities. The remaining two Oil and Gas Operations will consist of the approximately ten (10) acres of the thirty (20) anticipated disturbance.

The SENE Operations Areas include a "Permanent Operations Area" and an "Ancillary Operations Area" as depicted in Exhibit B, such areas being utilized for oil and gas operations and for the locations of wells and associated drilling, completion, and reworking/recompleting activities and production facilities as depicted in Exhibit B.

The Permanent Operations Area within the SENE Operations Areas will consist of no more than eight (8) acres permanently disturbed in size for producing wells, including any tank batteries constructed by Operator. To facilitate Operator's subsequent operations on the wells located within the Permanent Operations Area, Owner agrees not to construct any permanent structures or improvements, including landscaping (other than native grasses not requiring irrigation), within the Permanent Operations Areas pursuant to subparagraph 8 r. below.

The Permanent Operations Area within the SENE Oil and Gas Operations Areas shall also be the locations for all future wells to be drilled and may also be used for the location of tanks, separators, dehydrators, compressor and all other associated oil and gas drilling and production equipment and facilities, electrical equipment, powerlines, underground electrical lines, transformers, electrical boxes, cabinets, flowlines, water pipelines, and portions of the pipeline easements and for all oil and gas operations. The Permanent Operations Area is for the exclusive use of the oil and gas companies for their oil and gas operations and the locations of wells and facilities.

Additionally, the SENE Oil and Gas Operations Areas shall include an "Ancillary Operations Area" and shall fall within the anticipated disturbance acreage of ten (10) acres for the larger Oil and Gas Operations Areas located on the lands in SENE. Upon written request by the Owner and the consent of the applicable Operator, Owner may use the Ancillary Operations Areas for parking and for the temporary location of equipment during those times that the areas are not being used by the Operator for their oil and gas operations and the location of the their facilities; provided, however, the Operator shall in all events and at all times have priority in the use of the "Ancillary Operations Area" and the Operator shall in no event be liable for damages caused in the whole or in part by their oil and gas operations.

To accommodate the activity in the Permanent and Ancillary Operations Areas, only two (2) of the ten (10) acres for the larger Operations Areas disturbed will be reclaimed upon completion of drilling operations and the remaining eight (8) acres for the larger Operations Areas will not be reclaimed until all the wells are plugged and abandoned and mineral development is complete.

If at any time, Operator determines that the Oil and Gas Operations Areas depicted on Exhibit B combined with the two-hundred foot setback area are not sufficient to maximize production of oil and gas from the Lands and lands pooled with the Lands, which determination is based upon an oil and gas engineering analysis prepared by Operator, Operator may propose additional Oil and Gas Operations Areas to Owner on or before the expiration of the primary term of the oil and gas lease between the parties of even date herewith. Owner and Operator shall then engage in good faith negotiations to determine whether the additional Oil and Gas Operations Areas proposed by Operator can be mutually agreed and become Oil and Gas Operations Areas for the purposes of this Agreement; provided, that any agreement by Owner to allow any such additional Oil and Gas Operations Areas shall be made in its sole and absolute discretion. If Owner and Operator are not able to reach a mutually acceptable agreement with respect to the proposed additional Oil and Gas Operations Areas, Owner will not be obligated to agree to the creation of any additional Oil and Gas Operations Areas on the Lands.

Operator agrees to fence the pits and other dangerous areas and at all times keep its well sites in good order and free of litter, debris, trash, or spilled hydrocarbons. In the event that Operator does not encounter commercial quantities of oil, gas, or other hydrocarbons at any well location and determines the location to be a "dry hole," Operator shall promptly fill in, smooth over, and clean up the well site and rights-of-way and shall restore and reseed the area with a seed mix reasonably approved by Owner after replacing topsoil. All cleanup and restoration activities shall be completed by Operator as soon as the reserve pit has been allowed to dry so that proper backfilling can be accomplished. If the reserve pit is not dry within six months of completion of drilling operations, it shall be pumped dry by Operator and the contents properly disposed of off the Land pursuant to applicable law. In the event that any well drilled upon the Lands is completed as a commercial producer of oil and/or gas, Operator shall promptly clean up the well site location and use only so much of the area as is reasonably necessary for its operations, and Operator shall restore such well location, reseeding the same with a seed mix specified by Owner, and Operator shall keep all well site locations neat, orderly, and clean at all times.

6. Pipelines, Flowlines Waterline and Pipeline Easements. Subject to Section 2, any pipelines constructed by Operator or KMGG on the Lands shall be constructed and maintained to the following specifications:

(a) Subject to the limitations herein, KMG and KMGG or other designated gas gatherer, has a continuing right and entitlement to own, operate, maintain, repair and replace all flowlines, gathering lines and other pipelines that may be necessary or convenient to their operations on the Property. KMG and KMGG shall also be entitled to locate temporary above ground waterlines. Although this Agreement is intended to confine the placement of pipelines or other necessary lines to certain specified locations within the Property, nothing herein shall be construed as a limitation on the rights of KMG, KMGG or other designated gas gatherer's ultimate right to make all necessary well connections to any well that is drilled on or falls within the Lands.

(b) Pipeline easements shall be at the locations identified on Exhibit B. If a certified survey has not been completed for an existing pipeline or future pipeline, the locations of such pipelines as depicted on Exhibit B are approximate locations. In the event that KMG prepare a certified survey for a pipeline, KMG and KMGG shall furnish a copy of the survey to Surface Owner upon its written request.

(c) Locations of pipelines and easements may be changed by mutual agreement of Surface Owner and KMG or KMGG; provided, however, all costs and expenses of such relocations shall be borne by the Party which requests the relocation. KMG or KMGG, as applicable, and Surface Owner shall enter into a separate relocation agreement for the relocation of pipelines and easements, all costs and expenses of such relocations to be paid by the Party which requests the relocation.

(d) Pipeline easements shall be fifty (75) feet in width during initial construction activities and fifty (50) feet in width for all operations, maintenance and transportation activities.

(e) Surface Owner shall have the right to cross pipeline easements with roadways and other utilities; provided that, such crossing is made at an angle of between 60 degrees and 90 degrees. Surface Owner shall also have the right to install and maintain easements that are both adjacent to and within the easements identified herein, for utility lines, including those for water, gas, sewer, electric, telephone, cable, television, and fiber optic and other pipelines; provided, however; i) any new underground facilities shall have at least twenty-four (24) inches of vertical clearance between such new facility and a pipeline provided for herein; and ii) any overhead power lines shall be at least twenty feet (20') above the ground. Surface Owner will notify each utility company that, except in cases of emergency, KMG must be contacted at least ten (10) business days prior to commencement of any trenching or digging activities within ten feet (10') of their easement areas.

(f) Any new underground facilities which travel along a pipeline easement identified herein shall be located a distance horizontally of at least ten feet (10') from parallel existing pipelines.

(g) Surface Owner acknowledges that it has received a copy of a document from Kerr-McGee titled "General Guidelines for Design and Construction Activities On or Near Kerr-McGee

Gathering LLC and Kerr-McGee Rocky Mountain Corporation Pipelines and Related Facilities" (Revision 1/2011) with which Surface Owner agrees to comply and that is attached hereto as Exhibit C.

(h) Surface Owner shall grant the pipeline easements reflected on Exhibit B (for production from the Property and/or other adjacent lands) to KMG or, at the request of KMG, to KMGG, at the time KMG request them and at no cost to them, such pipeline right-of-way grant to be substantially in the form attached hereto as Exhibit D.

(i) Surface Owner will provide KMG with at least forty-five (45) days advance written notice before it begins to pave streets and access routes where intrusion upon access routes and/or pipeline easements provided for herein may occur in order to allow KMG or KMGG, as applicable, the opportunity to lay new pipelines that cross underneath the streets or access routes. If Surface Owner does not give the notice required herein, KMG may bore underneath the paved streets and access routes, such costs and expenses for the boring to be paid by Surface Owner.

(j) If Surface Owner's development plans anticipate that roadways will or may in the future cross over pipelines that are then installed on the Property, Surface Owner will pothole or request that KMG pothole the existing pipelines to check the depth of such pipelines. Prior to Surface Owner's installation of a new roadway, KMG or KMGG will lower, as required, the affected pipelines to sufficient depth for the road elevations. Surface Owner agrees to pay KMG or KMGG, as applicable, the reasonable cost of inspecting and lowering the pipelines, as well as the reasonable cost of any sub-grade work required to achieve the road construction specifications. Surface Owner shall not install the portion of the road that crosses a pipeline until the pipeline has been lowered.

(k) The top of each pipeline shall be buried at least forty-eight inches (48") below the surface of the ground and shall be constructed in such a manner to safely permit Surface Owner to construct roads and utilities over such pipeline in such locations as may be designated by Surface Owner and shall be double ditched with soil compaction and restoration of topsoil to the surface.

(l) Operator shall be responsible for backfilling, repacking, reseeding, and recontouring the surface so as not to interfere with Owner's present or future agricultural operations and its present or planned future development or other use of the Lands. If pipeline trenches settle so as to interfere with Surface Owner's irrigation or ranching activities, upon request by Surface Owner, Operator shall fill in, repack, and level such trenches.

(m) Surface Owner reserves the rights to occupy, uses, and cultivate the lands affected by such pipelines, and to grant such rights to others, so long as such use does not interfere with Operator's operations. No structures may be built by Surface Owner within fifteen (15) feet of any pipeline or within the pipeline easement.

7. Power Lines. Subject to Section 2 above, any buried or overhead power lines constructed on the Lands shall be constructed and maintained to the following specifications:

(a) Operator will consult with Owner and with the independent power company supplying power to Operator with respect to the location of overhead power lines prior to construction, and shall obtain Owner's written consent for such locations which consent shall not be unreasonably withheld. Overhead power lines will be constructed so as to cause the least interference reasonably possible with Owner's visual landscape and Owner's existing and planned future uses of the Lands, and, to the maximum extent reasonably possible, overhead power lines will be constructed along fence lines or property lines. Owner shall be entitled to receive payment from Operator's electricity provider for overhead power lines.

(b) Subject to compliance with any guidelines and policies of the power provider, within two months after a well has been placed on production, all power lines constructed by or for Operator downstream of the independent power company's meters shall be buried, and all power line trenches shall be fully reclaimed and reseeded to the reasonable satisfaction of Owner. Buried power lines shall be installed at least thirty-six inches 36" below the surface of the ground, and shall be constructed in such a

manner to safely permit Owner to construct roads and utilities over such power line in such locations as may be designated by Owner.

(c) Operator agrees that it will not construct overhead power lines that will interfere with irrigation in those portions of the Lands which are developed or are being irrigated or cultivated or which may, in the future, be developed or irrigated or cultivated or which are fallow as part of a crop rotation or management program.

8. **Temporary Waterlines.** Subject to Section 2 above, any above ground lines constructed on the Lands shall be constructed and maintained to the following specifications:

(a) ~~In addition to those lines anticipated in 6(b),~~ temporary above pipeline easements shall be at the locations identified on Exhibit D. If a certified survey has not been completed for existing and future pipeline corridors, the locations of such pipelines as depicted on Exhibit D are approximate locations. In the event that KMG prepare a certified survey for a pipeline, KMG and KMGG shall furnish a copy of the survey to Surface Owner upon its written request.

(b) Temporary waterline easements can be used by the operator during the duration of the production life cycle of the wells drilled in the identified OGOA's. This easement shall be fifty (50) feet in width during temporary construction activities and fifty (50) feet in width for all operations, maintenance and transportation activities.

(c) Locations of waterline easements may be changed by mutual agreement of Surface Owner and KMG; provided, however, all costs and expenses of such relocations shall be borne by the Party which requests the relocation. KMG or KMGG, as applicable, and Surface Owner shall enter into a separate relocation agreement for the relocation of pipelines and easements, all costs and expenses of such relocations to be paid by the Party which requests the relocation.

9. **Operations.** Operator's operations on the Lands shall be conducted according to the following specifications:

(a) Operator shall at all times keep its well sites and road rights-of-way safe and in good order, free of noxious weeds, litter and debris, and shall spray for noxious weeds upon reasonable demand by Owner as required by the rules of the COGCC.

(b) Operator shall rehabilitate, restore, reclaim, and reseed all disturbed areas caused by Operator's operations consistent with 13 (d) herein or within such other time as provided in the then applicable rules of the COGCC.

(c) All cattle guards and fences installed by Operator shall be kept clean and in good repair and will become the property of Owner when Operator ceases ownership of its oil and gas lease covering that portion of the Lands.

(d) Operator shall not permit the release or discharge of any toxic or hazardous chemicals or wastes on the Lands. Any spill of oil, grease, solvents, chemicals, or hazardous substances on the Lands which are reportable to regulatory authorities under applicable law or regulations shall be immediately reported within twenty-four (24) hours to Owner by telephone, fax, or e-mail, to be followed by copies of written notices which Operator has filed with regulatory authorities within five (5) business days after such filing.

(e) Operator shall remove only the minimum amount of vegetation necessary for the construction of roads, well locations, and other facilities. Topsoil shall be conserved during excavation, stockpiled and reused as cover on disturbed areas to facilitate regrowth of vegetation.

(f) Operator shall use reasonable efforts to assure that construction or routine maintenance activities will not be performed during periods when the soil is too wet to adequately support construction

equipment. Once a well is completed, Operator shall also access the Lands with heavy trucks and tankers as may be necessary for the efficient operation of the Lease taking into account the levels of production from wells drilled on the Lease; it being understood that access will be more frequent earlier in the production process. Once development of the surface has started, Owner and Operator will consult with one another to determine if changes need to be made with respect to heavy truck and tanker access taking into account then current and anticipated levels of production from the Lease and the safe and efficient use of the surface development.

(g) All surface facilities not subject to safety requirements shall be painted Operator's colors, which shall blend with the natural color of the landscape.

(h) No living quarters shall be constructed upon the Lands, except that drilling crews and geologists or service personnel may use temporary "dog houses" during drilling, completion, or reworking activities.

(i) Operator shall not fence any access roads without the prior consent of Owner.

(j) Operator shall construct stock-tight fences for both sheep and cattle around any dangerous areas, including any pits where Operator drills wells.

(k) Operator and its employees, agents, and contractors shall leave all gates located on the Lands as they found them; gates found closed are to be closed; gates found open are to be left open.

(l) None of Operator's employees, agents, or contractors, or any other person under the direction or control of Operator shall be permitted to carry firearms or any other weapon on the Lands and such persons shall not hunt, fish, or engage in recreational activities on the Lands. No dogs will be permitted on the Lands at any time. Operator will notify all of its contractors, agents, and employees that no dogs, firearms, weapons, hunting, fishing or recreational activities will be allowed on the Lands. None of Operator's employees, agents, or contractors, or any other persons under the direction or control of Operator, shall possess or be under the influence of alcohol or illegal drugs while on the Lands. Further, Operator and its employees, agents, or contractors, or any other person under the direction or control of Operator shall not cut or transport firewood, cut Christmas trees or remove pine nuts, artifacts and other non oil and gas materials from the Lands.

(m) Operator shall conduct operations and activities on the Lands in accordance with, and shall strictly comply with all existing local, state, and federal laws, rules, and regulations. Operator shall also obtain any permit, consent, license, or other authorization required by law or by any governmental authority having jurisdiction.

(n) Operator shall take all reasonable steps to prevent fire and to promptly extinguish fire, including, but not limited to, maintaining a fire extinguisher, shovel, and bucket in each service vehicle entering upon the Lands. Operator shall fully and promptly compensate Owner for all damages caused by fire arising out of Operator's operations, including, without limitation, any charges incurred by Owner for fire suppression and the replacement of fences and other property damaged or destroyed by fire.

(o) Operator shall conduct dust suppression in such areas and at such times as Owner shall reasonably request as long as the dust being suppressed is the result of Operator's operations.

(p) Operator will drill no closer than two hundred feet (200') from any spring or water well now existing on the leased premises without the Owner's prior written consent.

(q) Operator will place no facility upon the surface of the leased premises closer than two hundred feet (200') from any house or barn without prior written consent. In addition, Operator will use good faith efforts to minimize the aesthetic and noise impact of the equipment located in any Oil and Gas Operations Area and any of its other equipment located on the leased premises, which efforts will include

screening any such equipment and other improvements on the leased premises as may be reasonably requested by the Lessor.

(r) Owner may install and maintain, at Owner's expense, landscaping to include associated irrigation in the Oil and Gas Operations Areas outside the Permanent Operations Areas provided Owner obtains the prior written consent of a landscaping plan that describes the location of the improvements and the materials to be used. Operator's consent may not be unreasonably withheld. It will be deemed reasonable if Operator withholds its consent if the landscaping plan would, in Operator's judgment, pose a safety risk or unreasonably interfere with its operations. Operator shall not be liable for destruction of or damage to any landscaping and improvements installed by Owner if such destruction or damage is the result of Operator's oil and gas operations on the Lands, provided that such operations are conducted in accordance with the terms of this Agreement.

(s) Operator shall use reasonable efforts to conduct its operations so as to cause the least damage reasonably to the surface as a result of muddy conditions.

10. Limitation on Rights. Except for lands pooled or unitized with the Lands, the Lands may not be used in connection with operations on other premises not owned by Owner without Owner's written consent.

11. Produced Water. With respect to any water produced from wells drilled on the Lands in connection with the production of oil, gas, or other hydrocarbons, Operator agrees to reinject produced water or haul the same away from the Lands and properly dispose of such produced water off the Lands. Operator shall not construct evaporation pits for produced water, but may have a small "emergency pit" during drilling, completion, or reworking operations for produced water purposes.

12. Seismic Operations. Seismic operations are expressly authorized by the Lease and this Agreement. Operator will notify Owner prior to the commencement of such operations and will pay Owner seven dollars and fifty cents (\$7.50) for each acre disturbed by such operations on the Land. Lessee shall not conduct any seismic or geophysical operations whatsoever when surface conditions are not relatively dry. At all times, Lessee shall use reasonable efforts to conduct its seismic operations so as to cause the least damage reasonably possible to the surface.

13. Extraordinary Damages. The compensation provided for herein is acknowledged by Owner as sufficient and in full satisfaction for damages and use of the Lands caused or created by the reasonable and customary entry, rights-of-way, and operation and use of roads and well sites, but do not include damage to livestock, buildings, or improvements, or injuries to persons. This Agreement does not relieve Operator from liability due to Operator's negligence or due to spills or discharges of any hydrocarbon or toxic substance or hazardous chemicals or wastes, or from leaks or breaks in Operator's pipelines. Damage to or loss of livestock shall be paid for by Operator at the higher of market value or replacement cost.

14. Reclamation and Reseeding.

(a) Each area of surface disturbance shall be reclaimed as early and nearly as practicable to their original condition and shall be maintained to control dust and minimize erosion during interim reclamation to the extent practicable and in compliance with the COGCC requirements. The areas being reclaimed shall be ripped and recontoured to conform to existing grade or otherwise as consulted and agreed upon by the landowner.

(b) As to crop land on the Lands, if subsidence occurs, Operator will add weed free topsoil to the depression and the land affected will be re-leveled to its original contour as practicable. As to non-crop land on the Lands, the disturbed area shall be revegetated at Operator's expense to its pre-disturbance condition as nearly as is practicable.

(c) To the extent required by applicable regulations, chemicals, foreign substances, pit liners, contaminated soil and trash and unnecessary equipment shall be removed from the Oil and Gas Operations

Areas within a reasonable time after such material and equipment is no longer needed for Operator's operations hereunder or pursuant to the lease of even date.

(d) The reclamation operations in the immediately preceding three subsections shall be completed by Operator in accordance with the required COGCC requirements and during the subsequent fall or spring (weather permitting) of the completion of any well in each Oil and Gas Operations Area. Once COGCC reclamation requirements have been met reclamation will be deemed complete.

(e) Unless Owner otherwise agrees in writing or unless otherwise provided in the rules of the COGCC, within six (6) months after termination of any of Operator's operations on the Lands, Operator, as final reclamation, shall fully restore and level the surface of the lands affected by such terminated operations as near as possible to the contours which existed prior to such operations. Operator shall use water bars and other measures as appropriate to prevent erosion and non-source pollution.

(f) Each well shall be plugged and abandoned by Operator in accordance with the applicable law upon permanent cessation of production. Weather permitting, reclamation will be completed in the subsequent fall or spring whichever occurs first, following the plugging and abandonment of each well, all surface equipment and surface appurtenances shall be removed by Operator from the Lands and all unreclaimed and/or unvegetated areas previously disturbed by Operator's operations shall be reclaimed by Operator at its expense and in accordance with the standards set out in above.

(g) At least thirty (30) days prior to reclamation of road(s) constructed by Operator for its operations or any portion thereof, Operator shall provide Owner written notice of such roadway reclamation, which shall include a plat of the portion of the road(s) to be reclaimed. During the period prior to reclamation, Owner may elect to retain any such portion of the road(s) for Owner's use by giving written notice to Operator and the COGCC. Upon receipt of Owner's election to retain such portion of the road(s), Operator shall blade the Road(s) into good and passable condition, and shall thereafter be relieved of its obligation to maintain and/or reclaim such portion of the Road(s).

15. Indemnification. No party shall be liable for, or be required to pay for, special, punitive, exemplary, incidental, consequential or indirect damages to any other party for activities undertaken within the scope of this agreement.

Except as to claims arising out of pollution or environmental damage (which claims are governed by paragraph 15 below) or out of other provisions of this Agreement (which claims shall be governed by the terms of this Agreement), each party shall be and remain responsible for all losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation attorneys' fees and other costs associated therewith (all of the aforesaid herein referred to collectively as "Claims"), arising out of or connected with each such party's ownership or operations or activities on the Lands, no matter when asserted, subject to applicable statutes of limitations. Each such party shall release, defend, indemnify and hold the other parties, their officers, directors, employees, agents and contractors, successors and assigns, harmless against all such Claims. This provision does not, and shall not be construed to, create any rights in persons or entities not a party to this Agreement, nor does it create any separate rights in parties to this Agreement other than the right to be indemnified for Claims as provided herein. Notwithstanding anything in this Agreement to the contrary, Operator shall compensate Owner for any damage, loss, or claim which Owner sustains because Operator did not act as a reasonable and prudent operator.

Upon the assignment or conveyance of a party's entire interest in the Lands, that party shall be released from its indemnification provided above, for all actions or occurrences happening after such assignment or conveyance.

16. Environmental Indemnity. The provisions of paragraph 14 above, except for the first paragraph thereof, shall not apply to any environmental matters, which shall be governed exclusively by the following:

"Environmental Claims" shall mean all Claims asserted by governmental bodies or other third parties for pollution or environmental damage of any kind, arising from operations on or ownership of the Lands or ownership

of the oil and gas leasehold interest, whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith, including but not limited to any Claims arising from Environmental Laws or relating to asbestos or to naturally occurring radioactive material. Environmental Claims shall not include the costs of any remediation undertaken voluntarily by any party, unless such remediation is performed under the imminent threat of a Claim by a governmental body or other third party;

"Environmental Laws" shall mean any laws, regulations, rules, ordinances, or order of any governmental authority(ies), which relate to or otherwise impose liability, obligation, or standards with respect to pollution or the protection of the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.), the Clean Water Act (33 U.S.C. §§ 466 et seq.), the Safe Drinking Water Act (14 U.S.C. §§ 1401-1450), the Hazardous Material Transportation Act (49 U.S.C. §§ 1801 et seq.), the Clean Air Act, and the Toxic Substances Control Act (15 U.S.C. §§ 2601-2629); and

Operator shall protect, indemnify, and hold harmless Owner from any failure to comply with any Environmental Law or any Environmental Claims relating to the Lands or the Lease that arise out of Operator's ownership and operation on the Lands and its ownership and operation of any pipeline easement or right-of-way on the Lands. Owner shall fully protect, defend, indemnify and hold harmless Operator from any and all Environmental Claims relating to the Lands that arise out of Owner's operations on the Lands.

17. Exclusion From Indemnities and Notice. The indemnities of the parties herein shall not cover or include any amounts which the indemnified party is actually reimbursed by any third party. The indemnities in this Agreement shall not relieve any party from any obligations to third parties.

If a Claim is asserted against a party for which the other party would be liable under the provisions of this Agreement, it is a condition precedent to the indemnifying party's obligations hereunder that the indemnified party give the indemnifying party written notice of such Claim setting forth all particulars of the Claim, as known by the indemnified party, including a copy of the Claim (if it is a written Claim). The indemnified party shall make a good faith effort to notify the indemnifying party within five days of receipt of a Claim and shall affect such notice in all events within such time as will allow the indemnifying party to defend against such Claim.

18. Release. To the maximum extent permitted by law, Operator releases and waives and discharges Owner and, if applicable, Owner's officers, directors, employees, agents, successors, and assigns from any and all liability for personal injury, death, property damage, or otherwise arising out of Operator's or its agents' operations under this Agreement or Operator's use of Owner's property, unless such injury, death, or property damage is the result of Owner's negligent acts or omissions or those of its members, officers, directors, employees, agents, successors, and assigns.

19. Inspections and Reports. Operator and its authorized agents and representatives shall have access to the Oil and Gas Operations Areas, and to the surface location of any well drilled outside of the Lands that is or will be drilled into the Lands, and shall have the right to witness and observe all operations conducted thereon, including the drilling, logging, testing, casing, completing, Directional Surveying, and plugging and abandonment of any well thereon. Upon reasonable advance notice, Owner shall have the right to inspect Operator's records with respect to such operations to verify Operator's compliance with this Agreement. Owner shall maintain the confidentiality of all such information for so long as such information is not publicly available. Owner shall indemnify, defend and save and hold harmless Operator from and against any claims and liabilities for damage to property or injury to persons arising out of the acts or omissions of Owner or its agents or representatives in connection with such inspections, except to the extent such claim or liability is attributable to the negligence or willful misconduct of Operator or its contractors.

20. **Designated Contact Person.** Operator and Owner will each from time to time designate an individual, with appropriate 24-hour telephone and fax numbers, who is to be the primary contact person for discussions and decisions concerning matters related to this Agreement. Current contact information is as follows:

Owner: David and Lynn McDonough and The David M. McDonough Trust:

David McDonough
307 N. County Line Rd 1
Johnstown, CO 80534
Phone: 970-412-9590

Judith Elaine Folley Family Trust

William E. Folley (Eric)
1608 E. County Line Rd 72
Wellington, CO 80549
Phone: 970-420-1675

Operator: Kerr-McGee Oil & Gas Onshore, LP
1099 18th Street, Suite 1800
Denver, CO 80202-1918
Phone: 720-929-6000
Attn: Wattenberg Surface Land Manager

21. **Assignment.** This Agreement shall run with the Lands and shall be assigned by Operator in connection with any assignment of Operator's oil and gas leasehold rights under all or a portion of the Lands described on Exhibit A.

22. **Enforcement Costs.** If either party defaults under this Agreement, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, incurred by the non-defaulting party in enforcing this Agreement, with or without litigation.

23. **Insurance.** Operator elects to self-insure its common law and assumed liability under this Agreement for bodily injury and/or property damage to third parties in connection with accidents arising out of its operations, but only to the extent of those liabilities assumed herein. Operator self-insures its general liability with excess liability insurance covering all operations and attaching over its self-insurance retention. Such excess insurance coverage shall list Owner as an additional insured and Operator shall furnish a certificate of such insurance to Owner upon Owner's request. Operator's self-insurance will respond to the same extent as if an insurance policy had been purchased naming Owner as an additional insured, but only to the extent of those liabilities assumed herein. Any limitations of Operator's self-insurance shall not limit its obligations to Owner as provided in this Agreement or the Lease. In the event of an assignment or transfer of this Agreement, the assignee or transferee shall be required to provide insurance coverage that is reasonably acceptable to Owner before Owner shall be required to consent to such assignment.

24. **As is/Where is.** Operator acknowledges that it is aware of all natural and manmade hazards on the Lands. Operator takes the Lands subject to all such hazards, as is, where is.

25. **Recording.** Owner and Operator will jointly execute a Memorandum of this Agreement for the purpose of placing third parties on notice of this Agreement. The parties understand and agree that the Memorandum of this Agreement and any amendments thereto will be recorded in Larimer County, Colorado at the sole cost and expense of Operator.

26. **Conflicts.** With the exception of the term, in the event of any conflict between this Agreement and any Oil and Gas Lease that covers the Lands, the terms and provisions of this Agreement shall control.

27. **Binding Effect.** This Agreement is binding upon and shall inure to the benefit of the successors and assigns of the parties.

28. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be considered an original for all purposes, with the same effect as if the signatures thereto and hereto were upon the same instrument.

29. **Term.** This Agreement shall continue until the termination of the Oil and Gas Lease between Operator and Owner covering the Lands, at which time this Agreement shall terminate. All of Operator's obligations and liabilities under this Agreement shall survive the termination of the said Oil and Gas Lease.

30. **Applicable Law.** This Agreement shall be construed under the laws of the State of Colorado.

31. **Dispute Resolution.** In the event of any dispute, disagreement or controversy arising out of, relating to or connected with this Agreement including but not limited to the location of any well, surface sites or facilities, access roads and pipelines, the Parties shall use reasonable, good faith efforts to settle such dispute or claim through negotiations with each other. If such negotiations fail to produce a mutually acceptable resolution to the matter in dispute, the Parties will submit the same to non-binding mediation before a sole mediator. The mediation will be conducted by the Judicial Arbiter Group, Inc., 1601 Blake St, Suite 400, Denver, CO 80202 ("JAG"). The matter in dispute will be submitted to mediation within fifteen (15) days of a written demand for mediation from one Party to the other. If the mediation is not successful, the matter in dispute shall be submitted for final reconciliation by a sole arbitrator to be chosen by the Parties from the pool of arbitrators at JAG by no later than thirty (30) days of a written demand for arbitration from one Party to the other (or such other time as may be agreed to by the Parties). The demand for arbitration and the response thereto shall concisely state the matter(s) in dispute, the position of the Party with respect to such matter(s) and the Party's proposed resolution of the same.

a. During any negotiations conducted pursuant to this Agreement, the Parties will keep and maintain a record of all issues upon which agreement has been reached. To narrow and focus the issues that may need to be resolved in an arbitration proceeding, each of the submittals by the Parties shall include all points that have been agreed to by the Parties during their negotiations.

b. Any proceeding before the arbitrator shall be conducted in accordance with the Uniform Arbitration Act then currently in effect. The purpose of the arbitrator's role is to produce a final decision of any matter submitted for arbitration to which the Parties' herein agree to be bound. The place of arbitration shall be at the offices of JAG in Denver, Colorado.

c. The JAG arbitrator shall, ideally, be possessed of demonstrated experience in matters pertaining to the law of oil and gas development, and, at a minimum, Colorado law of real property governing the use and enjoyment of surface and subsurface estates. If the Parties cannot reach agreement on the choice of JAG arbitrator within ten (10) days of the original demand for arbitration (or such other time as may be agreed to by the Parties), they shall abide by the assignment of JAG arbitrator made by the JAG Administrator.

d. For any matter requiring judicial resolution in connection with the arbitration, including the enforcement of any award, enforcement of this agreement to arbitrate, or injunctive relief to preserve the status quo pending arbitration, the Parties agree to the exclusive jurisdiction of the State District Court of Larimer County, Colorado.

e. The Parties shall share equally in the cost of retaining the services of JAG for any mediation or arbitration conducted hereunder and each shall be solely responsible for its own costs and expenses of preparing for and pursuing any mediation or arbitration. With the exception of converting any arbitration award into a judgment, the prevailing Party for any matter requiring judicial resolution in connection with the arbitration shall be entitled to recover reasonable costs and attorneys' fees from the non-prevailing Party.

DATED as of the year and date first above written.

OWNER:

By: 

Name: David M. McDonough

By: 

Name: Lynn M. McDonough

The David M. McDonough Trust

By: 

Name: David M. McDonough, Trustee

Judith Elaine Folley Family Trust

By: 

Name: William E. Folley, Co-Trustee

By: 

Name: Thomas J. Folley, Co-Trustee

OPERATOR:

KERR-MCGEE OIL & GAS ONSHORE, LP

By: 

Name: David H. Bell

Title: Agent and Attorney in Fact

KMGG signs this Agreement in its capacity as the pipeline company and in no other capacity. KMGG is not otherwise bound by the obligations in this Agreement, but shall have the right to enforce the obligations and shall be bound by the terms and conditions in Section 6.

KERR-McGEE GATHERING LLC

By: 

Name: Ronald H. Olsen

Its: Land Manager

ACKNOWLEDGEMENTS

STATE OF Colorado §

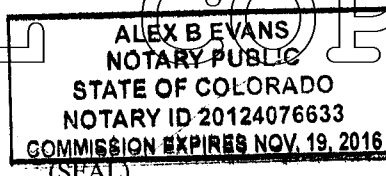
COUNTY OF Denver §

The foregoing instrument was acknowledged before me this 31st day of July, 2013, by
David M. McDonough.

Witness my hand and official seal.

EVANS, Alex B
Notary Public

Address: 1738 Wynkoop St #102
Denver, CO 80202



My Commission Expires:

STATE OF Colorado §

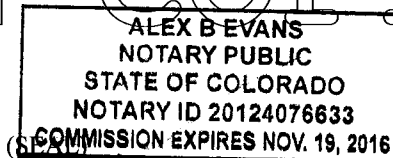
COUNTY OF Denver §

The foregoing instrument was acknowledged before me this 31st day of July, 2013, by
Lynn M. McDonough.

Witness my hand and official seal.

EVANS, Alex B
Notary Public

Address: 1738 Wynkoop St #102



My Commission Expires:

STATE OF Colorado §

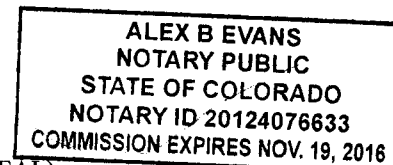
COUNTY OF Denver §

On this 31st day of July, 2013, before me personally appeared David M. McDonough, to me personally known, who, being by me duly sworn, did say that he is the Trustee of The David M. McDonough Trust, and that said instrument was signed and sealed on behalf of said Trust by authority of its Trustee. Given under my hand and seal this 31st day of July, 2013.

Witness my hand and official seal.

EVANS, Alex B
Notary Public

Address: 1738 Wynkoop St #102
Denver, CO 80202



My Commission Expires:

STATE OF Colorado §

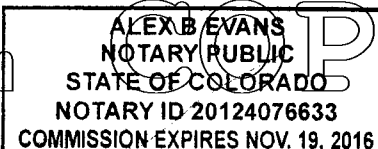
COUNTY OF Denver §

On this 31st day of July, 2013, before me personally appeared **William E. Folley**, to me personally known, who, being by me duly sworn, did say that he is the Co-Trustee of the **Judith Elaine Folley Family Trust**, and that said instrument was signed and sealed on behalf of said Trust by authority of its Trustees. Given under my hand and seal this 31st day of July, 2013.

Witness my hand and official seal

EVANS, ALEX
Notary Public

Address: _____



(SEAL)

My Commission Expires:

STATE OF Colorado §

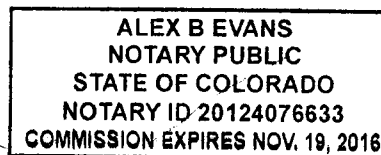
COUNTY OF Denver §

On this 31st day of July, 2013, before me personally appeared **Thomas J. Folley**, to me personally known, who, being by me duly sworn, did say that he is the Co-Trustee of the **Judith Elaine Folley Family Trust**, and that said instrument was signed and sealed on behalf of said Trust by authority of its Trustees. Given under my hand and seal this 31st day of July, 2013.

Witness my hand and official seal.

EVANS, ALEX
Notary Public

Address: _____



(SEAL)

My Commission

STATE OF Colorado §

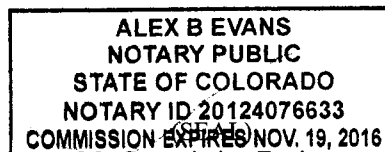
COUNTY OF Denver §

The foregoing instrument was acknowledged before me this 31st day of July, 2013, by **David H. Bell** as Agent and Attorney in Fact of **Kerr-McGee Oil & Gas Onshore, LP.**

Witness my hand and official seal.

EVANS, ALEX B
Notary Public

Address: _____



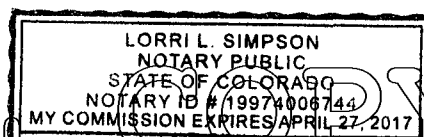
(SEAL)
My Commission Expires:

STATE OF COLORADO §
 §
COUNTY OF DENVER §

The foregoing instrument was acknowledged before me this 31st day of July, 2013, by Ronald H. Olsen as Agent and Attorney in Fact of Kerr-McGee Gathering LLC..

Witness my hand and official seal.


Notary Public



Address: PO Box 13124 Denver Co 80201

(SEAL)

My Commission Expires:

UNOFFICIAL COPY

UNOFFICIAL COPY

EXHIBIT A
To
Surface Use Agreement

The Lands:

Township 05 North, Range 68 West, 6th P.M.

Section 13 - Tracts 1, 2, & 4 of the McDonough M.R.D. No. S-34-92 recorded at Reception #93010125, being portions in the SE/4 and NE/4; And also Lot 1, as described in Boundary Adjustment File No. 06-S2612 recorded at Reception #20060084609, being a portion of the S/2SE/4.

Tract 1

Considering the east line of the said SE/4 of Section 13 as bearing North 00° 00' 00" East and with all bearings contained herein relative thereto.

Commencing at the southeast corner of said Section 13; Thence along said east line of the SE/4 of Section 13 North 00° 00' 00" East 2412.12 to the northeasterly right of way line of the Union Pacific Railroad as described and recorded in Book 277, Page 175, records of said county and the True Point of Beginning; Thence continuing along said east line of the SE/4 of Section 13 North 00° 00' 00" East 230.65 feet to the south line of said NE/4 of Section 13; Thence along the east line of said NE/4 of Section 13 North 00° 00' 05" West 1321.38 feet to the north line of the S/2NE/4 of Section 13; Thence along said north line North 89° 53' 08" West 1414.67 feet to the easterly right of way line of the Great Western Railroad as described and recorded in Book 245, Page 204, records of said county and the beginning of a curve to the left having a central angle of 19° 13' 41" and a radius of 1392.70 feet (a radial line through said point bears North 34° 16' 44" West); Thence along said easterly right of way line and along the arc of said curve southwesterly 467.38 feet to said northeasterly right of way line of the Union Pacific Railroad; Thence along said northeasterly right of way line South 68° 33' 56" East 222.60 feet to the beginning of a tangent curve to the right having a central angle of 24° 41' 42" and a radius of 2982.00 feet; Thence continuing along said northeasterly right of way line and along the arc of said curve southeasterly 1285.27 feet to the end of said curve; Thence continuing along said northeasterly right of way line and tangent from said curve South 43° 52' 14" East 562.21 feet to the True Point of Beginning.

- Containing 31.57 acres, more or less

Tract 2

Commencing at the SE/4 of said Section 13; Thence along said east line of the SE/4 of Section 13 North 00° 00' 00" East 516.13 to the northeasterly right of way line of the Great Western Railroad as described and recorded in Book 221, Page 105, and Book 214, Page 435 records of said county and the True Point of Beginning; Thence continuing along said east line of the SE/4 of Section 13 North 00° 00' 00" East 1679.56 feet to the southwesterly right of way line of the Union Pacific Railroad as described and recorded in Book 277, Page 175, records of said county; Thence along said southwesterly right of way line North 43° 52' 14" West 718.25 feet to the beginning of a tangent curve to the left having a central angle of 24° 41' 42" and a radius of 2832.00 feet; Thence continuing along said southwesterly line and along the arc of said curve northwesterly 1220.62 feet to the end of said curve; Thence continuing along said southwesterly right of way line and tangent from said curve North 68° 33' 56" West 354.22 feet to the easterly right of way line of the Great Western Railroad as described and recorded in Book 245, Page 204, records of said county and the beginning of a curve to the left having a central angle of 80° 03' 49" and a radius of 1392.70 feet (a radial line through said point bears North 59° 49' 01" West); Thence along said easterly right of way line and along the arc of said curve southwesterly, and then southeasterly 1946.12 feet to the end of said curve; Thence continuing along said easterly right of way line South 40° 07' 10" West 10.00 feet to the northeasterly right of way line of the Great Western Railroad as described and recorded in Book 166, Page 382, records of said county; thence along said northeasterly right of way line South 49° 52' 50" East 506.24 to the northwesterly line of said Great Western Railroad right of way in Book 221, Page 105, and Book 214, Page 435; Thence along said northwesterly line North 40° 07' 10" East 50.00 feet to the northeasterly line of said right of way in Book 221, Page 105, and Book 214, Page 435; Thence along said northeasterly line South 49° 52' 50" East 113.62 feet to the northwesterly line of that certain parcel of land described and recorded in Book 937, Page 139 records of said county; Thence along said northwesterly line North 59° 37' 10" East 63.65 feet to the northeasterly line of said land in Book 937, Page 139; Thence along said northeasterly line the following two (2) courses and distances: 1) South 49° 52' 50" East 495.00 feet; 2) South 38° 33' 50" East 152.88 feet to the northeasterly line of that certain parcel of

land described and recorded in Book 780, Page 548, records of said county; Thence along said northeasterly line and along the east line of said land in Book 780, Page 548 the following two (2) courses and distances: 1) South 49° 52' 50" East 394.82 feet; 2) South 00° 00' 00" West 39.23 feet to said northeasterly line of the right of way in Book 221, Page 105, and Book 214, Page 435; Thence along said northeasterly line South 49° 52' 50" East 258.00 feet to the True Point of Beginning.

- less and except Tract 3 of the McDonough MRD No. S-34-92 recorded at Reception #93010125, with legal description commencing at the SE/4 of said Section 13; Thence along said east line of the SE/4 of Section 13 North 0° East 1018.22 feet; Thence North 90° West 589.23 feet; Thence South 00° 35' 28" East 451.27; Thence South 38° 33' 50" East 136.94 feet; Thence South 49° 52' 50" East 394.82 feet; Thence South 0° East 39.23 feet; Thence South 49° 52' 50" East 258 feet to the True Point of Beginning.

- Containing 65.32 acres, more or less

Tract 4

Commencing at the SE/4 corner of said Section 13; Thence along said east line of the SE/4 of Section 13 North 00° 00' 00" East 1321.38 feet to the south line of the N/2 of said SE/4 of Section 13; Thence along said south line North 89° 58' 42" West 1126.83 feet to the southwesterly right of way line of the Great Western Railroad as described and recorded in Book 166, page 382, records of said county and the True Point of Beginning; Thence continuing along said south line of the N/2 of the SE/4 of Section 13, North 89° 58' 42" West 1623.75 feet to the west line of said SE/4 of Section 13; Thence along said west line North 00° 03' 43" East 1268.00 feet to said southwesterly right of way line of the Great Western Railroad as described and recorded in Book 166, Page 382 and the beginning of a curve to the right having a central angle of 22° 50' 53" and a radius of 960.00 feet (a radial line through said point bears North 17° 16' 17" East); Thence along said southwesterly right of way line and along the arc of said curve southeasterly 382.82 feet to the end of said curve; Thence continuing along said southwesterly right of way line and tangent from said curve South 49° 52' 50" East 1685.35 feet to the True Point of Beginning.

- Containing 25.20 acres, more or less

Lot 1

Considering the South line of the SE/4 of Section 13, Township 5 North, Range 68 West as bearing S 88° 47' 52" E with all bearings contained herein relative thereto.

A parcel of land in the SE/4 of Section 13, Township 5 North, Range 68 West of the 6th P.M. and being more particularly described as follows:

Commencing at the SW corner of the SE/4 of said Section 13; thence run S 88° 47' 52" E, along the South line of the SE/4 of said Section 13, a distance of 88.33 feet to the Point of Beginning; thence continuing along said South line run S 88° 47' 52" E, a distance of 2663.98 feet to the East line of the SE/4 of said Section 13; thence run N 01° 08' 35" E, along said East line a distance of 372.28 feet to the South Right of Way line of the Great Western Railroad; thence run N 48° 44' 27" W, along said South Right of Way line a distance of 1473.76 feet to the North line of the S/2 of the SE/4 of said Section 13; thence run N 88° 50' 09" W, along said North line a distance of 1535.4 feet to a point lying 88.33 feet easterly of the NW corner of the SW/4SE/4 of said Section 13; thence run S 01° 12' 33" W, parallel to the West line of the SW/4SE/4 of said Section 13, a distance of 1319.69 feet to the Point of Beginning.

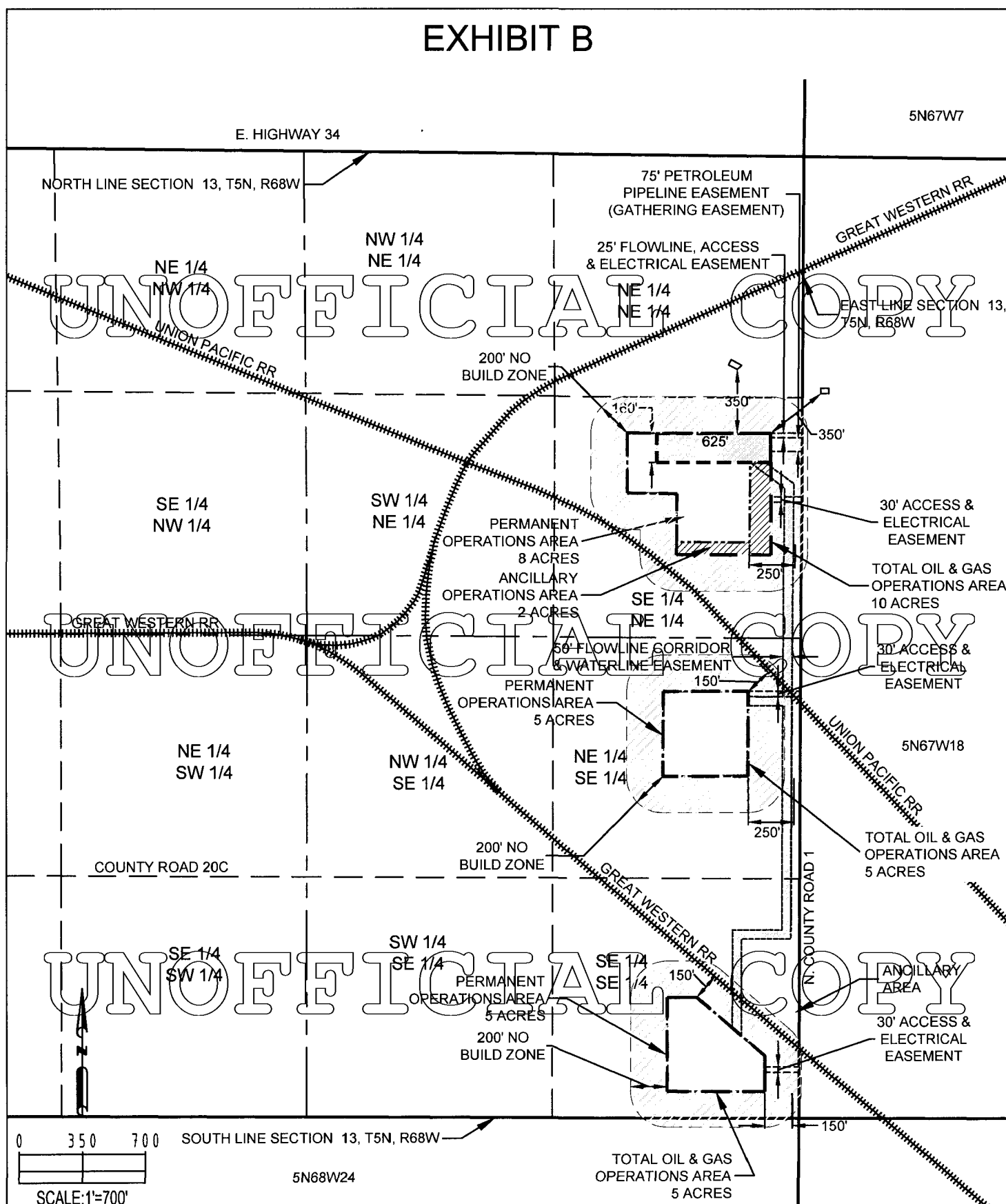
- Containing 68.46 acres, more or less

Township 05 North, Range 68 West, 6th P.M.

Section 13: A portion of the E/2SE/4 known as Tract 3 on the McDonough M.R.D. No. S-34-92, further described as follows: Commencing at the SE/4 of said Section 13; Thence along said east line of the SE/4 of Section 13 North 0° East 1018.22 feet; Thence North 90° West 589.23 feet; Thence South 00° 35' 28" East 451.27; Thence South 38° 33' 50" East 136.94 feet; Thence South 49° 52' 50" East 394.82 feet; Thence South 0° East 39.23 feet; Thence South 49° 52' 50" East 258 feet to the True Point of Beginning.

All lands being located in Larimer County, Colorado.

EXHIBIT B



PREPARED BY:



FIELD DATE:

NA

DRAWING DATE:

07-31-13

BY:

TJN

CHECKED BY:

TJN

PROJECT NAME:

FOLLEY - EXHIBIT B

SURFACE LOCATION:

E 1/2, SEC. 13, T5N, R68W, 6TH P.M.
LARIMER COUNTY, COLORADO



Exhibit C
To Surface Use Agreement



General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC Pipelines and Related Facilities

This list of design, construction and contractor requirements, including but not limited to the following, is for the design and installation of foreign utilities or improvements on Kerr McGee Gathering LLC (KMGG) right-of-way (ROW). These are not intended to, nor do they waive or modify any rights KMGG may have under existing easements or ROW agreements. For information regarding KMGG's rights and requirements as they pertain to the existing easements, please reference existing easements and amendments documents. This list of requirements is applicable for KMGG facilities on easements and in road rights of ways only. Encroachments on fee property should be referred to the Land & ROW Department. Any reference to KMGG in the below requirements is meant to include and apply to any Kerr McGee entity.

Design

- KMGG shall be provided sufficient prior notice of planned activities involving excavation, blasting, or any type of construction on KMGG's ROW or near its facilities. This is to determine and resolve any location, grade or encroachment problems and allow for the protection of KMGG's facilities and the general public. This prior notification is to be made **before** the actual work is to take place.
- The encroaching entity shall provide KMGG with a set of drawings for review and a set of final construction drawings showing all aspects of the proposed facilities in the vicinity of KMGG's ROW. The encroaching entity shall also provide a set of "as-built drawings" and submit to KMGG, showing the facilities in the vicinity of KMGG's ROW upon completion of the work.
- Only facilities shown on drawings reviewed by KMGG will be approved for installation on KMGG's ROW. All drawing revisions that affect facilities proposed to be placed on KMGG's ROW must be approved by KMGG in writing.
- KMGG shall approve the design of all permanent road crossings.
- Any repair to surface facilities following future pipeline maintenance or repair work by KMGG on its "prior rights" ROW will be at the expense of the developer or landowner. In addition, any repair to surface facilities following future pipeline maintenance or repair work by KMGG on replacement ROW granted to relocate KMGG facilities will also be done at the expense of the developer or landowner unless expressly addressed in surface use agreements and approved in writing by KMGG.
- The depth of cover over the KMGG pipelines shall not be increased or reduced nor surface modified for drainage without KMGG's written approval.
- Construction of any permanent structure within KMGG pipeline easement is **not** permitted without written approval by KMGG.
- Planting of shrubs and trees is not permitted on KMGG pipeline easement without written approval by KMGG.
- Irrigation equipment i.e. backflow prevent devices, meters, valves, valve boxes, etc. shall not be located on KMGG easement without written approval by KMGG.
- Foreign utility installations, IE, distribution gas, oil and gas gathering, water, electric, telephone, cable and sewer lines, etc., may cross perpendicular to KMGG's pipeline within the ROW, provided that a minimum of eighteen inches (18") of vertical clearance is maintained between KMGG pipeline(s) and the foreign utility. Any installation by a foreign utility with less than 18" of vertical separation is not allowed without written approval by KMGG. In no case will vertical separation be less than 12". Constant line elevations must be maintained across KMGG's entire ROW width, gravity drain lines are the only exception and must be approved in writing. Foreign line crossings below the KMGG pipeline must be evaluated by KMGG to ensure that a significant length of the KMGG line is not exposed and unsupported during construction. Foreign line crossings above the KMGG pipeline with less than 18" of clearance must be evaluated by KMGG to ensure that additional support is not necessary to prevent settling on top of the KMGG natural gas pipeline. A KMGG representative must be on site during any crossing activities to verify clearance depths and to assure the integrity and support of the



General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC Pipelines and Related Facilities

KMGG facility. All installations of foreign crossings done by boring and or jacking require the KMGG facility to be exposed to verify clearances.

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Foreign utilities shall not run parallel to KMGG pipelines within the KMGG easement without written permission by KMGG. A minimum of 10 feet of horizontal separation must be maintained in parallel installations whether the foreign utility is placed within the KMGG easement or adjacent to the KMGG easement. Any deviation from the 10' horizontal requirement must be approved in writing by KMGG and an "as built survey" provided to KMGG after installation. In the instance that high voltage electric lines, greater than 20kV, are installed parallel to a KMGG pipeline a minimum horizontal distance of 15' must be maintained.

- The foreign utility should be advised that KMGG maintains cathodic protection on its pipelines and facilities. The foreign utility must coordinate their cathodic protection system with KMGG's. At the request of KMGG, foreign utilities shall install (or allow to be installed) cathodic protection test leads at all crossings for the purposes of monitoring cathodic protection interference. The KMGG CP technician and the foreign utility CP technician shall perform post construction CP interference testing. Interference issues shall be resolved by mutual agreement between foreign utility and KMGG. All costs associated with the correction of cathodic protection interference issues on KMGG pipelines as a result of the foreign utility crossing shall be borne by the foreign utility for a period of one year from date the foreign utility is put in service.

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- The developer shall understand that KMGG, whether specifically required per federal law or by company standard, will mark the routing of its underground facilities with aboveground pipeline markers and test leads and maintain those markers and test leads. Markers will be installed at every point the pipeline route changes direction and adequate markers will be installed on straight sections of pipeline to insure, in the sole opinion of KMGG, the safety of the public, contractor, KMGG personnel and KMGG facilities.

- On all foreign utility crossings and / or encroachments, metallic foreign lines shall be coated with a suitable pipe coating for a distance of at least 10 feet on either side of the crossing.
- AC Electrical lines must be installed in conduit and properly insulated.
- On all foreign pipelines, DOT approved pipeline markers shall be installed so as to indicate the route of the foreign pipeline across the KMGG ROW.
- No power poles, light standards, etc. shall be installed in the KMGG easement without written approval by KMGG.
- KMGG installs above ground appurtenances at various locations that are used in the operation of its facilities. Kerr McGee will install protective enclosures at the above ground appurtenances to protect them from outside damage. The design and placement of these above ground appurtenances and protective enclosures is done at KMGG's sole discretion, and may exceed any regulatory requirements.

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Construction

- If KMGG will be relocating KMGG facilities for any entity, grading in the new KMGG ROW shall be +/- 6 inches before KMGG will mobilize to complete the relocation. Final cover after the completion of the project will not be manipulated by the requesting entity to be less than 48" nor more than 72". All cover that exceeds 72" or less than 48" will be approved in writing by KMGG. This does not preclude KMGG from installing the pipeline at a minimum cover of 36" as provided for in CFR 49 Part 192. Cover during all construction activities will NEVER be less than 36" unless approved in writing and a KMGG representative is on site during the time cover is reduced.
- The entity requesting relocation shall survey top of pipe after installation but before backfill to determine proper final elevation of KMGG facilities. The entity requesting relocation is solely responsible for the final depth of cover over the relocated KMGG facility. Any deviation from cover requirements as outlined above will be corrected at the sole expense of the entity requesting relocation.



General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC Pipelines and Related Facilities

- Contractors shall be advised of KMGG's requirements and be contractually obligated to comply.
- The continued integrity of KMGG's pipelines and the safety of all individuals in the area of proposed work near KMGG's facilities are of the utmost importance. Therefore, contractor must meet with KMGG representatives prior to construction to provide and receive notification listings for appropriate area operations and emergency personnel. **KMGG's on-site representative will require discontinuation of any work that, in his or her opinion, endangers the operations or safety of personnel, pipelines or facilities.**
- The Contractor must expose all KMGG pipelines prior to crossing to determine the exact alignment and depth of the lines. A KMGG representative must be present.**
- The use of probing rods for pipeline locating shall be performed by KMGG representatives only, to prevent unnecessary damage to the pipeline coating. A KMGG representative shall do all line locating.
- Notification shall be given to KMGG at least 72 hours before start of construction. A schedule of activities for the duration of the project must be made available at that time to facilitate the scheduling of KMGG's work site representative. Any Contractor schedule changes shall be provided to KMGG immediately.
- Heavy equipment will not be allowed to operate directly over KMGG pipelines or in KMGG ROW unless written approval is obtained from KMGG. Heavy equipment shall only be allowed to cross KMGG pipelines at locations designated by KMGG. Haul roads will be constructed at all crossings. The haul roads will be constructed using lightweight equipment. The existing depth of cover over the pipeline must be verified. Cover will be added such that a total of 8' of fill exists over the pipeline and extends a minimum of 10' on each side of the pipeline. Depth of cover will then taper as required for equipment access. Steel plates may be used for load dissipation only if approved in writing by KMGG.
- Contractor shall comply with all precautionary measures required by KMGG, at its sole discretion to protect its pipelines. When inclement weather exists, provisions must be made to compensate for soil displacement due to subsidence of tires.
- Excavating or grading which might result in erosion or which could render the KMGG ROW inaccessible shall not be permitted unless the contractor agrees to restore the area to its original condition and provide protection to KMGG's facility. At no time will cover be reduced to less than 36" without written approval by KMGG and a KMGG representative on site.
- A KMGG representative shall be notified prior to construction activities within twenty-five (25) feet of a KMGG pipeline or above ground appurtenance. The contractor **shall not** be allowed to work within twenty-five (25) feet of KMGG facilities without approval from the KMGG representative. The KMGG representative may or may not remain on site during the entire construction activity. Contractor shall use extreme caution and take appropriate measures to protect KMGG facilities. The contractor shall call the KMGG representative prior to backfilling around the KMGG facility to allow for a final inspection of the KMGG facility.
- Ripping is only allowed when the position of the pipe is known and not within ten (10) feet of KMGG facility. KMGG personnel must be present.
- Temporary support of any exposed KMGG pipeline by Contractor may be necessary if required by KMGG's on-site representative. Backfill below the exposed lines and 12" above the lines shall be replaced with sand or other selected material as approved by KMGG's on-site representative and thoroughly compacted in 12" lifts to 95% of standard proctor dry density minimum or as approved by KMGG's on-site representative. This is to adequately protect against stresses that may be caused by the settling of the pipeline.
- No blasting shall be allowed within 1000 feet of KMGG's facilities unless blasting notification is given to KMGG including complete Blasting Plan Data. A pre-blast meeting shall be conducted by the organization responsible for blasting.
- KMGG shall be indemnified and held harmless from any loss, cost of liability for personal injuries received, death caused or property damage suffered or sustained by any person resulting from any blasting operations undertaken within 500 feet of its facilities. The organization responsible for blasting shall be liable for any and all damages caused to KMGG's



General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC Pipelines and Related Facilities

facilities as a result of their activities whether or not KMGG representatives are present. KMGG shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given.

• No blasting shall be allowed within 200 feet of KMGG's facilities unless blasting notification is given to KMGG a minimum of one week before blasting. The organization responsible for blasting must complete Blasting Plan Data. KMGG shall review and analyze the blasting methods. A written blasting plan shall be provided by the organization responsible for blasting and agreed to in writing by KMGG. A written emergency plan shall be provided by the organization responsible for blasting.

- KMGG shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given. A pre-blast meeting shall be conducted by the organization responsible for blasting.
- **Any** contact with any KMGG facility, pipeline, valve set, etc. shall be reported immediately to KMGG. If repairs to the pipe are necessary, they will be made and inspected before the section is re-coated and the line is back-filled.
- KMGG personnel shall install all test leads on KMGG facilities.

Local Kerr-McGee Gathering LLC Representation:

Manager of Construction & Facilities Engineering: Kevin R. Osif, P.E.

Staff Engineer: Joseph E. Sanchez, P.E.

Operations Engineer: Erik Smith

Pipeline Foreman: James Phillips

Pipeline Foreman: Rick Noffsinger

Construction Foreman: Jim McQuiston

Phone: (303) 655-4307

Phone: (303) 655-4319

Phone: (303) 655-4359

Phone: (303) 655-4343

Phone: (303) 655-4326

Phone: (303) 655-4326

Emergency Contacts:

On call supervisor

Kerr McGee 24 hour emergency number

One Call Emergency

Phone: (303) 559-4001

Phone: (303) 659-5922

Phone: 811

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EXHIBIT D
To
Surface Use Agreement

Form of
RIGHT-OF-WAY GRANT

THIS RIGHT-OF-WAY GRANT ("Grant) is made this ____ day of _____,
201__, from _____, whose address is _____
Colorado

("Grantor," whether one or more), to KERR-MCGEE GATHERING LLC a Colorado limited
liability company, whose address is 1099 18th Street, Suite 1800, Denver, Colorado 80202
("KMGG"). The parties agree as follows.

For and in consideration of Ten Dollars (\$10.00) and other good and valuable
consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby
grants, conveys and warrants unto "KMGG", its successors and assigns, a perpetual right-of-
way and easement to survey, construct, maintain, inspect, operate, repair, replace, modify,
change the size of, reconstruct, mark, monitor, abandon or remove and release, at KMGG's
election, one or more pipelines, electric power lines, data transmission lines and equipment, and
all appurtenances, below and/or above ground, necessary or convenient for the transportation
or transmission of oil, gas, petroleum products, water, electricity, electronic data, hydrocarbons
and any other substances, whether electronic, fluid, solid or gaseous, and any products,
derivatives, combinations or mixtures of any of the foregoing, in, on, over, under, or through the
lands situated in _____ County, State of Colorado, being described as follows:

TOWNSHIP NORTH RANGE WEST 6TH PM
Section _____

The route and course of the right-of-way and easement conveyed hereby ("Right-of-Way
Lands") are more particularly described on Exhibit "A" attached hereto and made a part hereof.
The width of the Right-of-Way Lands is seventy-five feet (75') during construction, and
subsequent to construction the width of the Right-of-Way Lands is fifty feet (50'). If there is a
deviation in the Right-of-Way Lands as constructed, then Grantor agrees that upon request from
KMGG the parties will execute a Notice of Pipeline Location along with an as-built survey plat to
amend the description of the Right-of-Way Lands.

From time to time after the initial construction of the pipeline(s), KMGG may require the
use of the construction work space depicted on said Exhibit "A" to survey, construct, maintain,
inspect, operate, repair, alter, replace, modify, change the size of, reconstruct, mark, monitor,
abandon or remove the pipeline(s) together with appurtenances. KMGG may use the
construction work space from time to time in connection with the rights granted hereby, provided
it gives Grantor reasonable notice of such use and provided further that it restores the same as
provided below when not in use.

Grantor represents and warrants to KMGG that Grantor is the sole owner in fee simple
of the Right-of-Way Lands subject to the burden of the Right-of-Way and that Grantor has full
right, power and authority to enter into this Grant.

Any pipelines and/or appurtenances to be constructed underground pursuant to this
Grant shall be placed at a depth of not less than 48 inches below the surface of the ground.
Grantor agrees not to increase or decrease the surface elevation on the Right-of-Way Lands
without KMGG's prior written permission. KMGG shall repair and/or restore any fence(s) on or
adjacent to the Right-of-Way Lands that are removed or severed by KMGG in the course of the

operations provided for in this Grant to the condition such fence was in prior to its removal or severance by KMGG. If necessary to prevent the escape of Grantor's livestock, KMGG shall construct temporary gates or fences in those areas affected by KMGG's operations as provided for in this Grant.

To the extent reasonably practicable and within a reasonable period of time after completion of construction, KMGG shall level and restore any lands affected by KMGG's operations that have excessive settling and shall sufficiently compact the soil to the condition that existed at the time immediately prior to the placement of KMGG's pipeline(s).

Grantor agrees that Grantor will not build, create, or construct, or permit to be built, created or constructed, any obstruction, building, fence, reservoir, engineering works or other structures or improvements over, under, on or across the Right-of-Way Lands without the prior written consent of KMGG.

KMGG shall have all rights, privileges and benefits necessary or convenient for the full use and enjoyment of this Grant, including but not limited to the rights of ingress and egress over and across Grantor's lands lying adjacent to the Right-of-Way Lands for any and all purposes necessary or incidental to exercising KMGG's rights hereunder. Grantor agrees that at KMGG's option, KMGG may pay and discharge any taxes, mortgages or liens existing, levied or assessed on or against the lands burdened by the Right-of-Way easement. If KMGG exercises such option, KMGG shall be subrogated to the rights of the party to whom payment is made, and in addition to its other rights, may reimburse itself out of any rentals, royalties, shut-in royalties, or any other amounts otherwise payable to Grantor from KMGG.

KMGG shall be obligated to pay for, repair, replace or otherwise compensate Grantor for any damages resulting from KMGG's activities and operations on the Right-of-Way Lands, except for any damage to structures or improvements placed in the Right-of-Way Lands contrary to the terms contained herein, and Grantor shall pay for, reimburse, indemnify and hold KMGG harmless from any and all claims or damages resulting from Grantor's activities on the Right-of-Way Lands. Grantor shall have the right to use and enjoy the Right-of-Way Lands, subject to the rights herein granted.

This Grant cannot be modified, except by an instrument in writing signed by Grantor and by an authorized representative of KMGG.

The rights granted herein may be assigned in whole or in part, and the terms, conditions, and provisions of this Grant are a covenant running with the land and shall extend to and be binding upon the successors and assigns of Grantor and of KMGG.

KMGG shall record an original of this Right-of-Way Grant or a Memorandum of Right-of-Way Grant in the records of the County in which the Right-of-Way Lands are located. By recording this Right-of-Way Grant or a Memorandum of Right-of-Way Grant, KMGG shall be deemed to have accepted all of the terms and conditions hereof.

This Grant may be executed in counterparts, each of which shall be considered one and the same agreement.

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IN WITNESS WHEREOF, KMGG has executed and Grantor has executed and delivered
this Right-of-Way Grant as of the date first above written.

Grantor:

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STATE OF COLORADO)
)
COUNTY OF WELD) ss.

The foregoing instrument was acknowledged before me this ____ day of _____,
201____, by _____.

Witness my hand and official Seal.

My Commission Expires: _____

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Notary Public: _____
Address: _____

(SEAL)

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FOLLEY SUA MAP

