

**SURFACE USE AGREEMENT**  
**State MZ 2 Well**

This Surface Use Agreement ("**Agreement**") is effective the \_\_\_\_\_ day of March, 2017 ("**Effective Date**"), between Marcia Merry Morales Revocable Trust, dated September 3, 1997 ("**Landowner**" whether one or more), with a mailing address of 5182 County Road 523, Bayfield, CO 81122 and BP America Production Company, a Delaware corporation, ("**BP**") with an office at 380 Airport Road, Durango, CO 81303.

Landowner owns the surface estate in a tract of land in La Plata County, Colorado, more particularly described as ("**Property**"):

The SE1/4NW1/4, SW1/4NE1/4, Lots 2, 3 and 4, NE1/4SW1/4, W1/2SE1/4, SE1/4SW1/4 of Section 7U, Township 34 North, Range 6 West, N.M.P.M., La Plata County, Colorado.

BP is the owner of certain rights in one or more oil and gas leases underlying the Property or other lands within the proposed drilling and spacing Unit boundaries and BP has plans to drill a Unit well, the State MZ 2 ("**Well**"), from a surface location on the Property and within the Unit.

Landowner and BP have engaged in a discussion of BP's plan for the drilling and operation of the Well on the Property, and the Parties now desire to enter into this Agreement principally in order to clarify BP's plan.

In consideration of the promise by BP to pay a certain sum of money to Landowner (the amount of which is set forth in a side letter agreement) to be paid prior to construction and in consideration of the covenants contained in this Agreement, the Parties agree as follows:

**A. Landowner Matters:**

1. Monetary Payment. Landowner agrees that the recited payment constitutes (i) full payment for all current surface damages in connection with work performed within the area shown on Exhibit A (Drillsite or Well Pad) that occurs during the construction of the pad and the drilling and completion of the Well, and does not constitute payment for future damages that may occur to the Property outside the area shown on Exhibit A or future damages as a result of negligent operations within the area shown on Exhibit A and is (ii) consideration for any rights granted herein by Landowner.
2. Landowner Use of Drillsite. BP will have exclusive use of the Drillsite, as defined below, at all times. Landowner shall not use the Drillsite for storage, access or any other purpose.
3. Permission to Raise, Move and Install Utility Lines. Landowner hereby grants permission for La Plata Electric Association ("**LPEA**") to raise, move and install utility lines on the Property if and when requested by BP in connection with the Well. Landowner agrees to execute utility easements provided by LPEA as may be reasonably requested in order to comply with this provision.

4. Setback of Future Buildings from BP Well Facilities. Landowner agrees to comply with all applicable local, state and federal laws, rules and regulations pertaining to distance setbacks between the Well and Well facilities, any future homes, buildings (including portable buildings) and other habitable structures located on the Property. Regardless of such setback distance requirements, Landowner agrees that all such future structures will be located a minimum distance of at least 150 feet away from the Well and any of the associated wellhead equipment, pipelines and facilities. This agreement regarding setbacks does not apply to spacing requirements for ground water well permits issued by the Colorado Division of Water Resources.
5. Waiver of Notice and Consultation. Landowner waives the right to receive any notices set forth in COGCC Rule 305, and Landowner further waives the right to the Drilling Consultation set forth in COGCC Rule 306.a. Landowner acknowledges the receipt from BP of the information brochure for surface owners described in the COGCC Rules. Landowner acknowledges and agrees that BP has complied with all notice and consultation requirements of COGCC Rules 305 and 306.
6. Landowner Use of Property. Landowner acknowledges that as long as the terms and conditions set forth herein are complied with, this Agreement is deemed to satisfy BP's obligation to accommodate, whether under statute or common law, Landowner's use or legally potential use of the surface of the Property.

**B. BP Matters:**

1. Drillsite. BP estimates that the surface area that will actually be disturbed for the drill site of the Well ("Drillsite") will be approximately 2.0 acres. The Drillsite will be located approximately as shown on attached Exhibit "A."
2. Excess Material. BP may store material (e.g., soil and gravel) excavated from the Property on the Drillsite to be used for construction and reclamation of the Drillsite. BP also may import material from off of the Property for construction and reclamation of the Drillsite. After constructing the Drillsite, should BP determine that there is material in excess of what is required for reclamation and which can reasonably be stored on the Drillsite, then BP may deliver said excess material to a location on the Property for deposit that is mutually acceptable to both BP and Landowner. Any such excess material so delivered shall be free from all pollutants, contaminants, and hazardous substance. Should a mutually acceptable location on the Property not be found, then BP shall remove such excess material from the Property.
3. Firewood. Should BP cut down or trim any trees on the Property during its operations and should Landowner so desire, BP will cut wood greater than 4 inches in diameter into firewood ranging from 12 to 18 inches in length and place such firewood in a pile (not stacked) just off of the Drillsite, road or pipeline route, as BP and the Landowner mutually agree. In BP's sole discretion, it may purchase firewood to satisfy the foregoing firewood obligation. All wood less than 4 inches in diameter will be chipped and spread on the Drillsite, access road, reclamation areas or pipeline route, as BP deems appropriate. Firewood will not

in any case be split for the Landowner. Any such wood not requested to be cut into firewood by Landowner will be chipped and spread on the Drillsite, access road, reclamation areas or pipeline route, as BP deems appropriate.

4. Survey Plats. Upon Landowner's request in writing, BP will provide to Landowner a copy of any survey plat obtained by BP depicting the Drillsite or any access roads, pipelines or facilities on the Property.
5. Recording of Agreement. BP may record this Agreement in the records of La Plata County, Colorado. BP may also, in its sole discretion and without the joinder of Landowner, execute and record from time to time written declarations with accompanying survey plats, and any amendments to same, for the purpose of properly or more accurately locating and describing the as built Drillsite, access roads, pipelines and other Well facilities.
6. Maintenance and Repair of Access Roads. BP will reasonably maintain any existing roads that are used by BP, its agents, affiliates, or its contractors, on the Property in their pre-existing condition or better. BP will maintain any new roads that are constructed by BP on the Property to BP's standards. BP will make all necessary repairs to the roads caused by BP's use or by the use of anyone on the Property by virtue of BP's well operations. However, BP will not be required to snow plow or otherwise clear any road of snow.
7. Burial of Pipelines. BP will, to the extent reasonably practicable, bury all water and gas pipelines to a minimum depth of 36 inches below the surface at the time of installation, unless subsurface conditions such as rock prohibit the installation of the line to that depth at a reasonable cost.
8. Reclamation.
  - a. Initial Construction. After the drilling and completion of the Well, and the construction of any associated facilities such as the well pad, access road and pipelines, those areas of land that BP will not use for continuing production operations will be reclaimed as required in applicable rules and regulations (*e.g.*, COGCC Rule 1003).
  - b. Subsequent Surface Disturbance. All subsequent disturbances by BP to areas reclaimed under the preceding paragraph will be similarly reclaimed by BP within a reasonable amount of time, recognizing practical limitations of weather and season.
  - c. Final Abandonment. All areas disturbed by BP will be reclaimed by BP in accordance with applicable rules and regulations (*e.g.*, COGCC Rule 1004), unless Landowner desires that the road and Drillsite remain in their then present condition and regulatory approval for same is obtained.
9. Indemnification. BP agrees to indemnify, defend and hold Landowner harmless from and against any and all expenses, losses or damages resulting from or relating to BP's operation and maintenance of the Well, facilities, access roads

and pipelines; provided, however, BP will not indemnify, defend and hold Landowner harmless from such expenses, losses or damages to the extent resulting from or relating to, in whole or in part, the gross negligence or willful misconduct of Landowner or Landowner's employees, contractors, guests or invitees.

10. Temporary Parking. Landowner agrees that during times of construction or other significant work, BP may park vehicles in areas near the work site or along roads. Any areas damaged by temporary parking shall be reclaimed to their pre-existing condition.

**C. General Provisions:**

1. Term. This Agreement is effective as of the Effective Date and will continue until (i) all oil and gas leases underlying the Unit expire, (ii) production from the Well and any additional wells producing from the Unit have permanently ceased and are permanently plugged and abandoned, (iii) any compressor on the Property is no longer being used or (iv) any Salt Water Disposal well in the Unit has ceased being used and is plugged and abandoned. After expiration, BP will remove such Well equipment and facilities from the Property in accordance with applicable rules and regulations.
2. No Waiver of Other Rights. With the exception of those duties and obligations that each Party has specifically agreed to assume and perform in this Agreement, those duties and obligations that have been confirmed or clarified in this Agreement and the rights specifically granted to, waived or relinquished by a Party in this Agreement, this Agreement will not be construed to waive or relinquish any Party's legal rights in, to or under the Property, including but not limited to rights of access or other reasonable surface use, now owned or hereafter acquired by a Party under any oil and gas lease or other agreement or instrument pertaining to the Property. Nor does this Agreement, subject to the foregoing exceptions, waive the rights of either Party under any applicable laws, rules or regulations pertaining to the Property.
3. No Application to Other Wells. The rights, duties and obligations of the Parties and other confirmatory or clarifying matters regarding the Well and its related facilities in this Agreement pertain only to the Well. This Agreement is not intended to, and will not be interpreted to, apply to any other well that may now be located or hereafter be drilled within the Unit, whether or not located on the Property. Each Party retains all of his/her/its legal rights with respect to such other well or wells, including, but not limited to, those legal rights referenced in the preceding paragraph.
4. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns. In addition, BP and any successor Well Operator may assign this Agreement to successive Operators of the Well. Assignment of this Agreement by either Party will act to terminate the assigning Party's duties, obligations and liabilities under



this Agreement from and after the date that the non-assigning Party receives a true copy of the assignment, with the exception of any indemnity or monetary obligations accruing prior to such date.

5. Applicable Law. This Agreement will be interpreted under the laws of the state of Colorado.
6. Entire Agreement. This Agreement and the Side Letter Agreement of the same date contain the final agreement, clarifications and confirmations of the Parties as to the matters addressed, and supersedes any and all prior oral or written negotiations, understandings and agreements regarding the Well and its related facilities, roads and pipelines. Except with respect to matters described below, this Agreement may not be modified unless the modification is in writing and is signed by Landowner and an authorized representative of BP.
7. Further Assurance. The Parties agree, at any time and from time to time, upon the reasonable request of either Party and without additional payment, to take or do all such further acts and things, and furnish and deliver all such further documentation and material (including any document or instrument requested by local, state or federal authorities) which, in the opinion of the requesting Party, may be necessary or useful in carrying out the purposes of this Agreement.
8. Regulatory Conditions. If BP is required by any regulatory agency as a condition of approval to either change the location of the Well to be drilled or the configuration of the Drillsite, BP shall negotiate in good faith with Landowner to attempt to reach a mutually agreeable amendment of this agreement to conform to the new location(s) and/or configuration(s) as approved by the regulatory agency.
9. Counterparts. This Agreement may be executed in two or more original counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. Electronically scanned or facsimile copies are acceptable.
10. Side Letter Agreement. This Agreement is subject to the terms of a Side Letter Agreement dated 11 Sept 2017, by and between Landowner and BP the terms of which are fully incorporated herewith.

This Agreement is executed by the Parties below and is effective as of the Effective Date.

**Landowner**

**BP America Production Company**

Marcia Merry Morales Revocable Trust,  
dated September 3, 1997

By: Marcia Merry Morales  
Marcia Merry Morales, Trustee

By: \_\_\_\_\_  
Debra Bacon, Attorney-In-Fact