

John G. Kalcevic

SURFACE OWNER'S AGREEMENT

THIS AGREEMENT, made and entered into this 25th day of March, 19 71, by and between JOHN G. KALCEVIC, a married man, of Aurora, Colorado, (hereinafter for convenience called the "Land Owner"), party of the first part; THE FEDERAL LAND BANK OF WICHITA, of Wichita, Kansas, (hereinafter for convenience called the "Mortgagee"),

~~Xhereinafter for convenience called the "Land Owner", party of the first part; THE FEDERAL LAND BANK OF WICHITA, of Wichita, Kansas, (hereinafter for convenience called the "Mortgagee"),~~
and UNION PACIFIC RAILROAD COMPANY (hereinafter for convenience called "Union Pacific"), party of the second part:

W I T N E S S E T H:

RECITALS:

Land Owner is the owner of the following described premises, hereinafter referred to as "described premises":

The Northwest Quarter (NW $\frac{1}{4}$) and South Half (S $\frac{1}{2}$) of Section Three (3), Township Two (2) South, Range Sixty-three (63) West of the Sixth Principal Meridian, Adams County, Colorado.

SUBJECT, however, to exceptions and reservations of minerals and rights of entry and of surface use contained in a certain deed or deeds of conveyance, as follows: Warranty Deed No. 4206 dated October 1, 1912, from The Union Pacific Land Company to Matthew W. Barr, Joshua L. Barr, Charles G. Pollock, Lovilo H. Fagan and Duncan M. May, recorded December 16, 1912, in Book 61 at Page 8, in the office of the County Clerk and Recorder of Adams County, Colorado.

Union Pacific Railroad Company is the successor in interest to The Union Pacific Land Company.

Union Pacific has leased or licensed or proposes to lease or license the described premises under an oil and gas lease or license for the production of oil, gas, and other hydrocarbon substances, and lessee or licensee, with the consent of Union Pacific may, during the terms of the lease or license, commit the described premises to a unit agreement whereby the described premises with other lands will be developed and operated for the production of oil and/or gas as a unit.

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AGREEMENT:

NOW, THEREFORE, it is mutually understood and agreed between the parties hereto as follows:

Section 1. In consideration of the mutual benefits and of the sum of Ten Dollars (\$10) paid by Union Pacific to the Land Owner, receipt whereof is hereby acknowledged, the Land Owner hereby confirms, extends, and grants to Union Pacific, its lessees, licensees, successors and assigns, the easements and rights to enter upon the described premises and to drill, construct, maintain and use upon, within, and over said premises, all oil wells, gas wells, derricks, machinery, tanks, drips, boilers, engines, pipe, power and telephone lines, water wells, roadways, and without limitation by reason of the foregoing enumeration, any and all other structures, equipment, fixtures, appurtenances, or facilities (all the above being included under the term "facilities") necessary or convenient in prospecting and developing for, producing, storing, transporting and marketing oil, gas, and other hydrocarbon substances under or produced from any portion of the described premises, or under or produced from any participating area in which the described premises in whole or in part are included as participating acreage under a unit agreement, together with the right to remove said facilities and the right to use such water as may be needed from the described premises, not including water from Land Owner's wells.

Section 2. Union Pacific agrees, so long as it is receiving oil and/or gas production from or oil and/or gas royalties upon production from the described premises, to pay or cause to be paid to the Land Owner the value on the premises of two and one-half per cent (2½%) of all the oil and gas hereafter produced, saved, and marketed therefrom, except oil and gas used in operations on the premises, and except that as to casinghead gasoline and other products manufactured from gas there shall be deducted the cost of manufacture; provided, however, should the lessee or licensee at any time include the described premises, or any portion thereof, under a unit agreement, to which inclusion Land Owner hereby consents, within the boundaries of a participating area or areas, with Union Pacific's royalties as to said lands so included, computed on the quantity of production apportioned thereto under such unit agreement or plan rather than upon the basis of actual production, then the two and one-half per cent (2½%) above set forth, payable to the Land Owner with respect to the same lands so included, shall likewise be applied to the production so apportioned under the unit agreement.

When production of oil from lands under several surface ownerships is commingled in one central tank setting for practical operating reasons, periodic individual well tests may be made to compute the quantities of commingled oil properly allocable to each well, and the two and one-half per cent (2½%) royalty provided herein shall be payable upon the quantities apportioned to each well as reported to Union Pacific in full satisfaction of the royalty obligations hereunder.

Section 2-1/2. Mortgagee, as the holder of a promissory note given by Henry Kalcevic, payment of which is secured by that certain mortgage dated September 3, 1963 in favor of Mortgagee, recorded on September 9, 1963 in Book 1094 at Page 406 in the office of the Clerk and Recorder of Adams County, Colorado, and which mortgage Land Owner has assumed and agrees to pay, hereby subjects and subordinates said mortgage to the rights granted to Union Pacific under Section 1 of this agreement.

Land Owner hereby assigns, transfers and sets over to Mortgagee all royalties, payments and other rights and benefits which may be paid or become payable to the Land Owner under and by virtue of this agreement. Mortgagee authorizes the Union Pacific to pay any and all such royalties or other payments to Land Owner until the Union Pacific is notified in writing by Mortgagee to make all such payments directly to Mortgagee; and the Union Pacific agrees to pay all such royalties and other payments hereunder to Mortgagee when notified in writing by Mortgagee to do so.

It is agreed that all money payments which may become due under and by virtue of this agreement shall, upon notice as aforesaid, be paid by Union Pacific to Mortgagee, to be applied as advance payment of the principal obligation under the promissory note secured by the aforementioned mortgage, but shall not defer the due date of any installment provided for in said mortgage, until such time as said principal obligation is paid in full, and thereafter such payments shall be made to Land Owner.

Section 3. Nothing herein contained shall be construed as a covenant to drill by Union Pacific, its lessees, licensees or unit operator under a unit agreement or as a grant to Land Owner of oil or gas rights.

Section 4. Union Pacific agrees (a) to pay for all damage to the Land Owner's lands, buildings and growing crops caused by the erection or construction of facilities to be used in connection with oil or gas operations; (b) that all pipe lines shall be buried below plow depth where such lines cross cultivated land; and (c) that where there are fences, to construct gates therein where necessary for Union Pacific, or its licensees or lessees, to cross same, and to keep such gates in repair and closed.

Section 5. Other than the payments to be made as aforesaid, the Land Owner shall not be entitled to any other or additional payments as a result of the conduct of drilling, mining or producing operations upon the described premises.

Section 6. Subject to the provisions of Section 8 hereof, it is agreed that the covenants to pay the sums provided in Sections 2 and 4 hereof shall be covenants running with the surface ownership of the described premises and shall not be held or transferred separately therefrom, and any such sums payable under Section 2 hereof shall be paid to the person or persons owning the surface of the described premises as of the date the oil or gas production is marketed. Union Pacific shall not, however, become obligated to make such payments to any subsequent purchaser of the described premises and shall continue to make such payments to the Land Owner until the first day of the month following the receipt by Union Pacific of notice of change of ownership, consisting of the original or certified copies of the instrument or instruments constituting a complete chain of title from the Land Owner to the party claiming such ownership, and then only as to payments thereafter made.

Section 7. The easements, rights, and uses herein shall be binding upon the described premises and each and every part thereof, and the present and future owners thereof, and shall continue for the benefit of the present or future owners of the oil and/or gas rights in the described premises and each and every part thereof, and their lessees and licensees, and during the life of any unit agreement, if the lands be committed thereto, for the benefit of the lands within the unit area.

Section 8. This agreement and the easements, rights and uses granted herein shall terminate upon the termination of the lease, license, or unit agreement, if the lands be committed thereto, whichever shall last terminate; provided, however, that such termination shall neither affect nor terminate the rights expressed or implied in the deed or deeds given by Union Pacific or its predecessor or predecessors in interest.

Section 9. This agreement shall be binding upon the successors and assigns of the parties hereto.

~~Section 10.~~ ~~_____ wife of~~
the above-named Land Owner, does hereby join with her husband in the execution of the foregoing agreement, hereby releasing and waiving all right of homestead and dower in and to the lands ~~above described.~~

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

Attest:

UNION PACIFIC RAILROAD COMPANY

Assistant Secretary

By _____
General Manager Property

Witness/Attest:

John G. Kalcevic
JOHN G. KALCEVIC - Land Owner

Witness/Attest:

THE FEDERAL LAND BANK OF WICHITA,
Mortgagee

Secretary

By _____
President

