

## **SURFACE USE AGREEMENT**

**THIS SURFACE USE AGREEMENT** ("Agreement") is dated on July 24, 2013 ("Effective Date"), and effective as described herein in section 16, and is among KERR-McGEE OIL & GAS ONSHORE LP ("Kerr-McGee") with an address of 1099 18th Street, Suite 1800, Denver, Colorado 80202, KERR-McGEE GATHERING LLC ("KMGG"), an affiliate of Kerr-McGee, also with an address of 1099 18<sup>th</sup> Street, Suite 1800, Denver, Colorado 80202 and Len D. Pettinger and Joann F. Pettinger in their capacity as Co-Trustees of both the LEN D. PETTINGER LIVING TRUST, dated January 16, 2013, and the JOANN F. PETTINGER LIVING TRUST, dated January 16, 2013 (together the "Surface Owners"), both with an address of 18437 County Road 8, Brighton, Colorado 80603. Kerr-McGee and Surface Owners are sometimes referred to hereinafter separately or together as a "Party" or the "Parties."

A. Surface Owners own the surface estate for lands in Weld County, Colorado, in the S/2S/2S/2 of Section 18, Township 1 North, Range 65 West, specifically described in Exhibit 1 attached hereto and hereinafter referred to as the "Property."

B. Kerr-McGee owns oil and gas leasehold rights in the Property pursuant to that certain Oil, Gas and Mineral Lease dated February 7, 1970 from Len D. Pettinger and Joannn Pettinger, as lessors, to Hanes M. Dawson, as lessee, recorded in the Office of the Weld County Clerk and Recorder on March 19, 1970 in Book 622 at Reception No. 1544050 ("Lease"), such Lease being adopted, amended and ratified by that certain Oil, Gas and Mineral Lease Amendment and Ratification dated September 11, 2012 and recorded on October 16, 2012 at Reception No. 3881327.

- iii) Kerr-McGee shall paint production facilities for wells, including wellhead guards, with paint that is approved by the COGCC; and
- iv) Surface Owners shall not inhibit Kerr-McGee's access to the Oil and Gas Operations Areas and Production Facility Location or inhibit Kerr-McGee's operations within the Oil and Gas Operations Areas and Production Facility Location by landscaping or other improvements, unless otherwise agreed upon between Surface Owners and Kerr-McGee.

2. Waivers for Setbacks and Other Regulations.

a. Surface Owners understand and acknowledge that the COGCC has rules and regulations that apply to the distance between a wellhead and public roads, production facilities, building units and surface property lines, among other things. In order to give full effect to the purposes of this Agreement, Surface Owners hereby waive their rights to object to the location of any of Kerr-McGee's facilities on the basis of setback requirements in the rules and regulations of the COGCC (as those rules and regulations may be amended from time to time) or of any local jurisdiction. For the operations contemplated by this Agreement, Surface Owners hereby specifically waive the setback requirements in COGCC Rules 603 and 604, including the high density setback distances and all Exception Zone setbacks, and also the setback regulations in any applicable local jurisdiction.

b. Surface Owners further and similarly waive their rights to object to any other requirements or regulations that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of Kerr-McGee or its successors and assigns to explore for and produce the oil and gas in accordance with this Agreement. Kerr-McGee or its successors and assigns may cite the waiver in this subsection 2.b. 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. Surface Owners agree not to object to the use of the surface within the Oil and Gas Operations Areas, Production Facility Location, Flowline Corridor and Pipeline Easements, so long as the proposed use is consistent with this Agreement. Surface Owners will provide Kerr-McGee or its successors and assigns with any and all written support and waivers that Kerr-McGee may reasonably require to obtain permits from the COGCC or any local jurisdiction.

3. Pipelines, Flowlines, Flowline Corridor and Electrical and Pipeline Easements.

a. Subject to the limitations hereinafter described, Kerr-McGee, KMGG or other gas gatherer designated by Kerr-McGee, has a continuing right and entitlement to own, operate, maintain, repair and replace all electrical lines, flowlines, gathering lines and pipelines that may be necessary or convenient to its operations on the Property. Although this Agreement is intended to confine the placement of pipelines to specified locations within the Property, nothing herein shall be construed as a limitation on the rights of Kerr-McGee, KMGG, or other designated gas gatherer, to make all necessary well connections to any well drilled pursuant to this Agreement within a Permanent Operations Area.



After receipt of the above notice, but not less than five (5) working days prior to mobilization within the applicable Oil and Gas Operations Area, either Kerr-McGee or Surface Owners may request an on-site meeting. The purpose of the meeting is to inform Surface Owners of the proposed operations and coordinate site access, hazards, barricades, restoration or any other issues that affect the use and development of the Property by Surface Owners.

6. Drilling and Completion Operations. Kerr-McGee shall endeavor to diligently pursue drilling operations to minimize the total time period and to avoid rig relocations or startup during the course of drilling. Surface Owners waive objections to continuous (i.e., 24-hour) drilling operations.

7. Governmental Proceedings.

a. Surface Owners hereby agree as follows: i) they will not object in any forum to the use by Kerr-McGee of the surface of the Property consistent with this Agreement and hereby waive any such right to object; ii) they will provide such other written approvals and waivers that are reasonably requested by Kerr-McGee consistent with this Agreement, including, but not limited to, all approvals and waivers to drill a well or to conduct oil and gas operations on the Property because of any law or regulation, including any local ordinance and regulations of the COGCC (but with no cost or expense to Surface Owners for such written approvals and waivers); iii) they waive any rights they have to require or request a surface inspection for wells proposed to be drilled on the Property for the purpose of requesting that conditions be attached to a permit to drill the well and waive their right to request such conditions; iv) they consent to the location of multiple wells within the Oil and Gas Operations Areas that are greater or less than fifty feet apart so long as all such wells are located within a Permanent Operations Area; and v) they waive rights to object, request a hearing before the COGCC or request that conditions be attached to a COGCC permit to drill and to allege noncompliance with COGCC rules or applicable statutes, or to allege potential adverse impact to public health, safety and welfare, including the environment and wildlife resources that are within the jurisdiction of the COGCC with respect to COGCC Applications for Permit to Drill ("Form 2") and COGCC Oil and Gas Location Assessments ("Form 2A"); provided however, nothing herein shall prohibit Surface Owners from reporting violations by Kerr-McGee of any governmental laws, rules or regulations, including those of the COGCC, to the appropriate governmental authorities.

b. Kerr-McGee agrees that it will not object in any forum to a request by Surface Owners to annex, zone, rezone or plat all or any portion of the Property to the extent such request is consistent with this Agreement and the attached Exhibits.

c. Surface Owners shall provide Kerr-McGee with written notice not less than thirty (30) days before each hearing for consideration of a plat application or other application for development for the Property or portions of the Property to be held before a local jurisdiction or state regulatory authority.

8. No Waiver of Rights/Application of Agreement Only to the Property. This Agreement applies only to the surface estate for the lands described herein as the Property and specifically to the Oil and Gas Operations Areas, Production Facility Location, Flowline

22. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to its conflict of law provisions.

23. Entire Agreement. This Agreement and the Letter Agreement set forth the entire understanding among the Parties regarding the matters addressed herein and supersede any previous communications, representations or agreement, whether oral or written. This Agreement shall not be amended, except by a written document signed by the Parties.

24. Construction. The Parties have participated jointly in the negotiating and drafting of this Agreement. In the event ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including, without limitation.

25. Incorporation of Exhibits. Exhibits 1 through 4 are incorporated into this Agreement by this reference.

26. Counterpart Executions. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, and all of which together shall constitute one and the same instrument.

The Parties have executed this Agreement on the dates set forth in the acknowledgements, but to be effective on the Effective Date as provided in section 16.

KERR-McGEE OIL & GAS ONSHORE LP

By: \_\_\_\_\_

Name: DAVID BELL  
Agent and Attorney-in-fact

*mb*

LEN D. PETTINGER LIVING TRUST,  
dated January 16, 2013

By: \_\_\_\_\_

Len D. Pettinger, Co-Trustee

By: \_\_\_\_\_

Joann F. Pettinger, Co-Trustee

JOANN F. PETTINGER LIVING TRUST,  
dated January 16, 2013

By: \_\_\_\_\_

Len D. Pettinger, Co-Trustee

By: \_\_\_\_\_

Joann F. Pettinger, Co-Trustee

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KERR-McGEE OIL & GAS ONSHORE LP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Agent and Attorney-in-fact

LEN D. PETTINGER LIVING TRUST,  
dated January 16, 2013

By: Len D. Pettinger  
Len D. Pettinger, Co-Trustee

By: JoAnn F. Pettinger  
Joann F. Pettinger, Co-Trustee

JOANN F. PETTINGER LIVING TRUST,  
dated January 16, 2013

By: Len D. Pettinger  
Len D. Pettinger, Co-Trustee

By: JoAnn F. Pettinger  
Joann F. Pettinger, Co-Trustee



**Exhibit 1**

to

**Surface Use Agreement dated and effective July 24, 2013  
among Kerr-McGee Oil & Gas Onshore LP, Kerr-McGee Gathering LLC (for the limited  
purposes described herein) and Len D. Pettinger and Joann F. Pettinger as Co-Trustees of  
both the LEN D. PETTINGER LIVING TRUST, dated January 16, 2013, and the JOANN  
F. PETTINGER LIVING TRUST, dated January 16, 2013**

**Legal Description**

**Township 1 North, Range 65 West  
Section 18: S/2S/2S/2  
Weld County, Colorado**