

## SURFACE USE AND DAMAGE AGREEMENT

This Surface Use and Damage Agreement ("Agreement") is made and entered into as of February 22, 2018 ("Effective Date"), by and between **M & J Dairy, LLC**, a Colorado limited liability company, 3400 E. State Highway 60, Loveland, CO 80537 ("Owner"), and **Petro Operating Company, LLC**, 915 West Lehigh Avenue, No. 1394, Englewood, Colorado 80150 ("Operator"), and their successors and assigns. Owner and Operator are sometimes referred to herein as a "Party" and collectively as "Parties."

### WITNESSETH:

**WHEREAS**, Owner owns the surface of following lands in Weld County, Colorado:

TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6<sup>TH</sup> P.M.  
Section 3: Part SE/4NW/4

(the "Subject Lands");

**WHEREAS**, the Parties desire to enter into this Agreement to provide for the orderly and expeditious development of the oil and gas resources without delay and without the expense of bonding and litigation; and

**WHEREAS**, the Parties intend by this Agreement to define and assign responsibilities with regard to the activities associated with exploration, production, storage and transportation of oil gas and associated substances from the Subject Lands and lands pooled therewith.

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

### SECTION 1 – OPERATOR’S RIGHTS

**1.1 Surface Use Area.** Owner hereby grants Operator, its employees and agents, the exclusive right to enter upon and use the Surface Use Area. The Surface Use Area is the southerly 8 acres of the parcel depicted as the "SUA on Exhibit A attached hereto and incorporated herein, (herein the "Surface Use Area") for the purposes of staking, drilling, completing, equipping and operating oil and gas wells and associated production and storage facilities, and producing, storing and transporting oil, gas and related substances, together with the right to construct and maintain on the Subject Lands an access road (located as herein provided), power lines (as herein provided), and pipelines (located as herein provided" ("Related Facilities") necessary to gather and transport oil, gas or related substances (collectively, all operations described in tis paragraph are defined as "Oil and Gas Operations"). Except for seismic operations described in Section 2.18 below and rights to use the existing road or newly constructed road along the South boundary line of the Subject Lands Operator shall not have the right to access, occupy or use any portion of the Subject Lands except as specifically granted herein.

**1.2 Termination of Rights.** This Agreement and Operator's rights and obligations hereunder will terminate upon the last to occur of (a) termination of all Oil and Gas Leases, or (b) completion of reclamation and restoration of the surface In compliance with the standards prescribed herein and with applicable state and federal rules, regulations and statutes.

**1.3 Reservation of Rights.** Except as expressly provided in this Agreement, Owner reserves the right to use all roads and rights to use the surface and subsurface estate in the Subject Lands, excluding that portion necessary for Oil and Gas Operations. Owner also reserves its right to grant successive easements on or across the Subject Lands on such terms and conditions as Owner deems necessary or advisable, except for the right to access and use the Surface Use Area and Related Facilities, and provided that subsequent easements and use do not unreasonably interfere with Oil and Gas Operations.

**1.4 Waiver of Surface Damage Payments.** Except for those payments expressly provided in this Agreement, Owner waives all surface damage payments pursuant to any federal, state or local law, rule, ordinance, regulation or order, common law or prior agreement. Operator may provide a copy of this Agreement to any third party as evidence of this waiver.

**1.5 Waiver of Setbacks and Other Requirements.** Owner waives all setback requirements under state or local law, including without limitation any setbacks contained in COGCC rules. Owner shall notify parties who purchase all or portions of the Subject Lands that Operator may cite the waiver in this Section 1.5 to obtain a location requirement exception or variance under COGCC rules or from a local jurisdiction.

**1.6 Government Proceedings.** Operator shall not object in any forum to a request by Owner to zone, rezone, plat or replat portions of the Subject Lands to the extent such request is consistent with this Agreement. Owner will not object in any forum to Operator's Oil and Gas Operations on the Subject Lands to the extent such operations would be in compliance with this Agreement and hereby waives any such right to object. Each Party shall provide written approvals or waivers reasonably requested by the other Party and consistent with this Agreement.

## **SECTION 2 – OPERATIONS ON THE SUBJECT LANDS**

**2.1 Notification of Construction.** Operator shall notify Owner not less than thirty (30) days prior to commencement of operations with heavy equipment for the drilling of a well and consult with Owner at a time mutually agreed by the Parties prior to commencement of operations with heavy equipment for the drilling of a well. Operator shall provide Owner with notice of other operations in accordance with COGCC rules and regulations.

### **2.2 Construction of Flow Lines and Pipelines.**

a. Except as otherwise agreed in writing by Owner, flowlines and pipelines referred to in this Section shall be used only for oil, gas and associated substances produced from wells located on the Surface Use Area.

b. The flowlines shall be located on the Surface Use Area. The Pipelines



shall be located on the South boundary line of the Subject lands, or in case that an existing pipeline is located on such South boundary line, then the pipeline easement shall be located adjacent to the North pipeline easement.

c. Operator shall be responsible for segregating the topsoil, backfilling, repacking, reseeding and recontouring the surface of any disturbed areas so as not to interfere with Owner's operations and shall reclaim such areas to be returned to pre-existing conditions as near as reasonably practical, including control of all noxious weeds. Operator shall provide Owner with a map or as-built drawing showing the surface location of all flow lines, pipelines and power lines after their installation. All flow lines located by Operator on the Subject Lands shall be buried at least four (4) feet below the surface. Operator shall install metal locator strips above all lines installed. All easements for flow lines, pipelines and power lines shall be limited to twenty (20) feet in width, being ten (10) feet on each side of the centerline of the flow line, except during construction when easements shall not exceed fifty (50) feet in width.

d. Subject to certain conditions as described herein, if Operator fails to use any flow line or pipeline for a period in excess of five (5) consecutive years, the flow line shall be deemed abandoned and Operator shall purge any remaining oil or gas from the line and render it fit for abandonment in place. Any easement granted for a flow line or pipeline shall terminate and revert to Owner upon completion of abandonment operations, and if evidence of the easement has been recorded in the county records, Operator shall execute and record in the county records releases necessary to provide notice of termination of said easement.

e. Operator acknowledges there may be stock and domestic waterlines on the Subject Lands, some of which may be buried. Owner shall provide Operator with maps or other evidence from which the location of such water lines may be located. Operator agrees that any areas disturbed to depths deeper than the stock water lines will be covered with a minimum of four (4) feet of dirt in order to prevent freezing or damage.

### **2.3 Power Lines.**

a. Except as otherwise provided, or as otherwise agreed in writing by Owner, all underground power lines built by Operator will be buried at least three (3) feet below the surface and constructed so as to cause the least possible interference with Owner's existing or known future operations on the Subject Lands. Existing power lines need not be relocated.

b. To the maximum extent reasonably practicable, Operator shall use power from any existing power lines. Operator shall pay any charge resulting from such use.

c. At such time as Operator desires to abandon any power line located on the Subject Lands, it shall notify Owner of such desire, and Owner shall have sixty (60) days from receipt of such notice to deliver to Operator a written election to take over such power line for Owner's own use. If Owner elects to take over a power line, Owner shall assume all liability, costs and reclamation obligations associated therewith, and upon receipt of such written election, Operator shall have no further liability or responsibility for such power line. Owner shall

promptly file all necessary notices or applications. If Owner does not timely elect to take over a power line, Operator shall de-energize said power lines as soon as reasonably practicable and continue to assume all liability, costs and reclamation obligations associated therewith.

#### **2.4 Surface Use Area.**

a. **Location.** All wells, tanks, separators, dehydrators, compressors and other associated oil and gas drilling and production equipment shall be located in the southwest part of the Surface Use Area in order to allow Owner the right of use of the notherly part of such Surface Use Area.. The Surface Use Area is: (i) outside of a Greater Wattenberg Area (GWA) drilling window as defined in Colorado Oil and Gas Conservation Commission ("COGCC") Rule 318A.a; and (ii) located more than 50' from an existing well per COGCC Rule 318A.c. In accordance with COGCC Rule 318A.c.(2), Owner consents to the surface location exception as outlined in this Agreement and authorizes the surface location of any well in the Surface Use Area. Owner shall execute and deliver to Operator a waiver sufficient to satisfy the consent requirement contained in COGCC Rule 318A.c.(2).

b. **Land Use.** Operator shall use the Surface Use Area only for Oil and Gas Operations. Owner shall not plat any surface property line within the Surface Use Area, and shall not construct any building, structure, or other temporary or permanent improvement within the Surface Use Area which could interfere with Oil and Gas Operations.

**2.5 Maintenance.** Operator shall keep the Surface Use Area and Related Facilities safe and in good condition, including, without limitation, control of noxious weeds, litter and debris. Operator shall conduct periodic trash pickup as deemed necessary. Operator shall comply with state and federal laws, rules and regulations governing the presence of any petroleum products, toxic or hazardous chemicals or wastes on the Subject Lands. All equipment and facilities placed on the property by Operator shall be painted in non-reflective tones with colors matched to but slightly darker than the surrounding landscape.

**2.6 Noise Mitigation.** Operator shall install all noise mitigation measures as required by the Colorado Oil and Gas Conservation Commission or local regulations.

#### **2.7 Access Road.**

a. Except in case of emergencies, no operations shall be conducted in the mud when activity leaves an impression of two inches in depth unless Operator requires immediate access in its sole opinion. If such immediate access is required during muddy conditions, Operator shall repair the affected road as soon as reasonably practicable.

b. The access from and to public roads to the Service Use Area shall be located on the South boundary line of the Subject Lands and where a road exists, the existing access road shall be located hereon. The location of the access road shall be depicted on Exhibit A to this Agreement. The location of Operator's access road may be changed by mutual agreement of Owner and Operator; provided however, all costs and expenses of such relocation shall be borne by the Party which requests the relocation.



roadway shall be limited to twenty feet (20') on each side of the centerline of the road easement for fills, shoulders and crossings whenever practicable or unless otherwise dictated by local, state or federal laws or regulations governing such road. Where reasonably requested by Owner, Operator shall install side ditches along roads to transport runoff to appropriate drainage structures.

d. No party shall unreasonably interfere with use by the other of Operator's access road. If requested by Owner, access to the Subject Lands by Operator from any County road shall be controlled by a metal, hinged gate, which gate Operator shall construct and install in accordance with reasonable specifications of Owner.

e. If requested by Owner, Operator shall place an appropriate sign or signs on the access road designating them as "Private Roads, No Trespassing or Hunting" and to assist Owner in the control of the use of such roads by unauthorized users. The size and color of such signs shall be subject to Owner's approval. Owner may lock gates across its private roads provided that Operator shall have access over the access road and shall have the right to place its own locks on such gates so long as Operator provides Owner with keys to such locks. Owner shall give Operator fifteen (15) days advance notice of Owner's election to lock gates in order that Owner and Operator can consult with each other regarding the type of locks to be used and arrangements for Operator's access.

f. Operator shall employ best management practices to suppress dust from Operator's activities on the Subject Lands. Operator shall promptly repair any damage to existing roads which it causes.

**2.8 Operator's Use of Roads.** In the interests of safety and dust control, Operator and its contractors, agents, and employees shall not exceed twenty (20) miles per hour in their use of the access road. If livestock are present, the speed limit shall be ten (10) miles per hour. Livestock shall have the right-of-way on the access road, such that Operator and its contractors, agents, and employees shall give ample time for livestock to move from the roadway. To the extent technologically and economically practicable, Operator shall use telemetry to monitor its operations to reduce the frequency of travel by Operator's employees, agents and contractors on the Subject Lands.

**2.9 Fences.** During drilling and completion operations, at Owner's request, Operator shall at its expense construct stock-tight fences around any dangerous area, including any pits, if any, constructed by Operator. Upon completion of drilling and completion operations, at Owner's request, Operator shall, at its expense and after consultation with Owner, construct and maintain permanent fencing around all wellheads, tanks and other surface facilities located in the Surface Use Area. All fencing shall be consistent in appearance and quality with surrounding fences and reasonable and customary fencing practices. Operator shall repair or replace damage to any fences or gates as soon as reasonably practicable.

**2.10 Improvements.** No existing fences, cattle guards, or other improvements shall be cut or damaged by Operator without the consent of Owner, which consent shall not be unreasonably withheld or delayed. In the event existing fences, cattle guards or other

improvements are cut or damaged by Operator, the damage shall be repaired by Operator or Owner shall be compensated for reasonable repair costs.

**2.11 Fire.** Operator shall take reasonable steps to prevent fire and to promptly extinguish fires. No trash will be burned by Operator on the Subject Lands. Operator shall reimburse Owner for the reasonable expense of fire suppression incurred by Owner and shall immediately reimburse Owner for any charges assessed to Owner by any local state or federal fire control agency.

**2.12 Behavior of Operator's Employees, Agents and Contractors.**

a. Operator shall prohibit all of its employees, contractors or agents from (i) bringing any dog, explosive device, weapon, alcoholic beverage, or illegal drug onto Owner's property; (ii) hunt or prospect for antlers, fossils or antiquities; (iii) recreate; or (iv) carry on any illegal activities on the Subject Lands. In the event Operator discovers any employee, contractor or agent of Operator failing to abide by the terms of this Section, Operator shall take appropriate action regarding such violation, including notification of the appropriate authorities.

b. Use of 4-wheelers on the Subject Lands will be restricted to occasions when surface conditions require their use or with Owner's prior written approval. Recreational use of 4-wheelers shall be forbidden. Operator will notify all of its employees, contractors or agents of this restriction.

**2.13 Insurance.** All vehicles traveling upon the Subject Lands and owned or operated by Operator and any of its employees, contractors or agents entering the Subject Lands shall be covered by automobile liability insurance covering owned, non-owned, and hired automobiles with limits of at least REDACTED for injury to or death of any one person for any one occurrence, and REDACTED property damage per occurrence. In addition, Operator shall carry comprehensive general liability insurance with minimum coverage limits of REDACTED for injury or death for any one occurrence, and REDACTED for property damage per occurrence. Operator and any of its employees, contractors or agents entering the Subject Lands shall provide Owner with certificates evidencing such insurance prior to entry onto the Subject Lands.

**2.14 Equipment Storage and Maintenance; Employee Housing.** Operator's equipment shall not be stacked or stored or maintained on the Subject Lands, except in the Surface Use Area, nor shall any of Operator's employees, contractors or agents be housed on the Subject Lands without the express written consent of Owner. Rigs may be stacked on the Surface Use Area for not more than fourteen (14) days, unless conditions of Force Majeure (s defined in Section 6.9 below) prevent such removal.

**2.15 Owner's Right to Relocate Related Facilities.** Upon Owner's request, Operator shall, where reasonably practicable and without disrupting Operator's activities, and at Owner's expense, relocate portions of the Related Facilities. Owner shall deliver an amount equal to the estimated cost of such relocation prior to commencement of the relocation. The payment shall



be adjusted up or down upon completion of the work and after Operator provides an itemized statement is provided to Owner.

**2.16 Seismic Operations.** Operator shall notify Owner prior to the commencement of any seismic operations on the Subject Lands and shall pay Owner [REDACTED] for each surface acre on the Subject Lands used in connection with such operations. Operator shall not conduct any seismic or geophysical operations when surface conditions are not relatively dry. At all times, Operator shall use reasonable efforts to conduct its seismic operations so as to cause the least damage reasonably possible to the surface.

**2.17 Water Testing.** Baseline water quality and quantity tests shall be conducted and paid for by Operator on all water wells on the Subject Lands prior to drilling and thereafter shall be tested in accordance with requirements of COGCC. Testing parameters will be those customarily used in the area. Test results shall be provided to Owner. Owner shall be entitled to conduct its own tests at its cost. Owner shall provide results of Owner's tests to Operator.

**2.18 Water Use and Disposal.** Operator shall comply with rules and regulations applicable to the removal and disposal of waters produced by its operations as established by the State of Colorado and other applicable authorities. Nothing in this paragraph shall be interpreted to allow Operator to discharge produced water on the Subject Lands. Nothing herein permits Operator to use water from Owner's wells.

### SECTION 3 – PAYMENTS TO OWNER

As consideration for the rights granted herein by Owner to Operator, Operator shall pay to Owner the amounts set out below.

**3.1 Surface Use Payments.** Upon signature of this agreement, Operator shall pay Owner [REDACTED]. Prior to commencement of drilling each well on the Surface Use Area, Operator shall pay Owner [REDACTED]. If Operator has not commenced drilling operations within 6 months of the date of this agreement, then Operator shall have the option to pay owner [REDACTED] this agreement in effect for an additional 6 month period. Additional payment of [REDACTED] months may extend this agreement up to 2 years. However, if Operator drills any wells within that time period, then the [REDACTED] payments made to extend the agreement will count toward the agreed payment of [REDACTED] well to the Owner.

**3.2 Payment Limitation.** The payments herein provided are acknowledged as sufficient and in full satisfaction for ordinary damages caused or created by reasonable and customary entry, rights of way, operation and use of the roads and well sites, but do not include damage to livestock, buildings or improvements or injuries to persons or damage or destruction to Owner's water wells or water supply or other amounts that may be due hereunder.

### SECTION 4 – RECLAMATION

**4.1 Reclamation and Restoration.** Unless Owner otherwise agrees in writing, upon termination of any of Operator's operations on the Subject Lands or upon drilling or completion

of any wells, Operator shall restore and level the surface of the Subject Lands affected by such terminated operations as nearly as practicable to contours which existed prior to such operations. Operator shall use water bars and such other measures as appropriate to prevent erosion and non-source pollution. Where requested, Operator shall restore all roads, drainage and irrigation ditches disturbed by Operator's operations as nearly as possible to the condition that existed prior to such operations. Any surface disturbed by Operator's activities shall be reseeded with native grasses and noxious weeds eliminated. Reseeding shall continue until vegetation is established in a healthy growth condition. Within two (2) years after the date upon which Operator ceases to use any surface facility, such surface facility shall be removed and the surface restored. Reclamation upon drilling or completion of any wells shall happen as soon as reasonably practicable, but no later than six (6) months after said drilling or completion activities, unless weather conditions dictate a delay in reclamation activities. In addition, Operator shall comply with all COGCC reclamation requirements.

## **SECTION 5 – ENFORCEMENT AND RESOLUTION OF DISPUTES**

**5.1 Default.** In the event that a Party fails to comply with any of their duties or obligations hereunder, the other Party shall notify the defaulting Party in writing. If said default is not corrected within thirty (30) days after receipt of said notice or activity is not initiated to cure such default in those instances where said default could not be cured within said thirty (30) day period, the non-defaulting Party shall have the right to terminate this Agreement, to enforce the provisions of this Agreement. If the defaulting Party refuses to acknowledge default under this Agreement, it shall be responsible for all costs and expenses, including reasonable attorney's fees, incurred by the non-defaulting Party as a result of said default as may be determined by a court of law or equity.

## **SECTION 6 – MISCELLANEOUS**

**6.1 No Warranty.** Owner makes no representation or warranty as to any matter of title, condition, suitability or regulatory status of the Subject Lands for Operator's purposes.

**6.2 Indemnification.** Operator shall defend, indemnify and hold Owner harmless from any damage, injury, claim, judgment or other liability arising, either directly or indirectly, from any damage or injury to any person or property resulting from Operator's use of the Subject Lands, including use by Operator's employees, contractors or agents.

**6.3 Compliance with Law.** Operator shall conduct all of its operations and activities on the Subject Lands in accordance with all applicable local, state and federal laws, rules and regulations.

**6.4 Memorandum of Agreement.** This Agreement shall not be recorded, but either Party may record with the County Clerk for Weld County, Colorado, a memorandum reciting that the Parties have entered into this Agreement which affects the Subject Lands. Such memorandum shall include a map showing the location of the Surface Use Area.



**6.5 Taxes.** Operator shall be responsible for and shall pay any additional taxes assessed against operator's property or activity on the Subject Lands.

**6.6 Construction of Agreement.** This Agreement shall be construed under and governed by the laws of the State of Colorado.

**6.7 Binding Effect.** This Agreement is binding upon the successors and assigns of the Parties.

**6.8 Communication and Contacts Between Owner and Operator.** Notice may be given to either Party by U.S. Mail or overnight courier at the street address provided below or by e-mail at the e-mail address provided below, or at such other address as each Party may subsequently provide to the other. Notice sent by U.S. Mail shall be sent by certified mail, return receipt requested, with postage prepaid. Such notice shall be deemed received when actually received by the other Party, or one of its authorized representatives. Notices as provided for herein shall be made in the manner provided for to:

**OWNER:**

Melvin Flaschenriem & Joann Flaschenriem  
3400 E. State Highway 60  
Loveland, CO 80537  
970-337-9867  
Email: [mjdairy@gmail.com](mailto:mjdairy@gmail.com)

**OPERATOR:**

Petro Operating Company, LLC  
Attn: Roger A. Parker  
915 West Lehigh Avenue, No. 1394  
Englewood, Colorado 80150  
Phone: 303-475-5640  
Email: [rogeraparker9@aol.com](mailto:rogeraparker9@aol.com)

**6.9 Force Majeure.** Should Operator be prevented from complying with any covenant of this Agreement, express or implied, (i) by reason of scarcity of, or inability to obtain or use equipment or material, (ii) by act of God, (iii) by lack of access, (iv) by strike or work stoppage, (v) severe weather conditions, (vi) by any federal, state or local law, rule, ordinance, regulation or order, (vii) by the failure to act of a governmental authority, or (viii) by any other event or cause beyond Operator's reasonable control ("Force Majeure"), then Operator's obligations and responsibilities of Operator under this Agreement shall be suspended so long as Operator is prevented by Force Majeure from conducting such operations and responsibilities, and Operator shall not be liable in damages for failure to comply therewith.

**6.10 Survival.** Operator's obligations and responsibilities hereunder shall survive the termination of this Agreement, including, without limitation, reclamation obligations.

**6.11 Signatures.** By signing below, the persons signing acknowledge and represent on behalf of the company for whom they are executing this Agreement that they have authority to sign this Agreement and the power to bind the company for which such person is signing. The Parties further agree that this Agreement may be executed in counterparts.

By: Melvin Flaschenriem  
Melvin Flaschenriem

By: Joann Flaschenriem  
Joann Flaschenriem

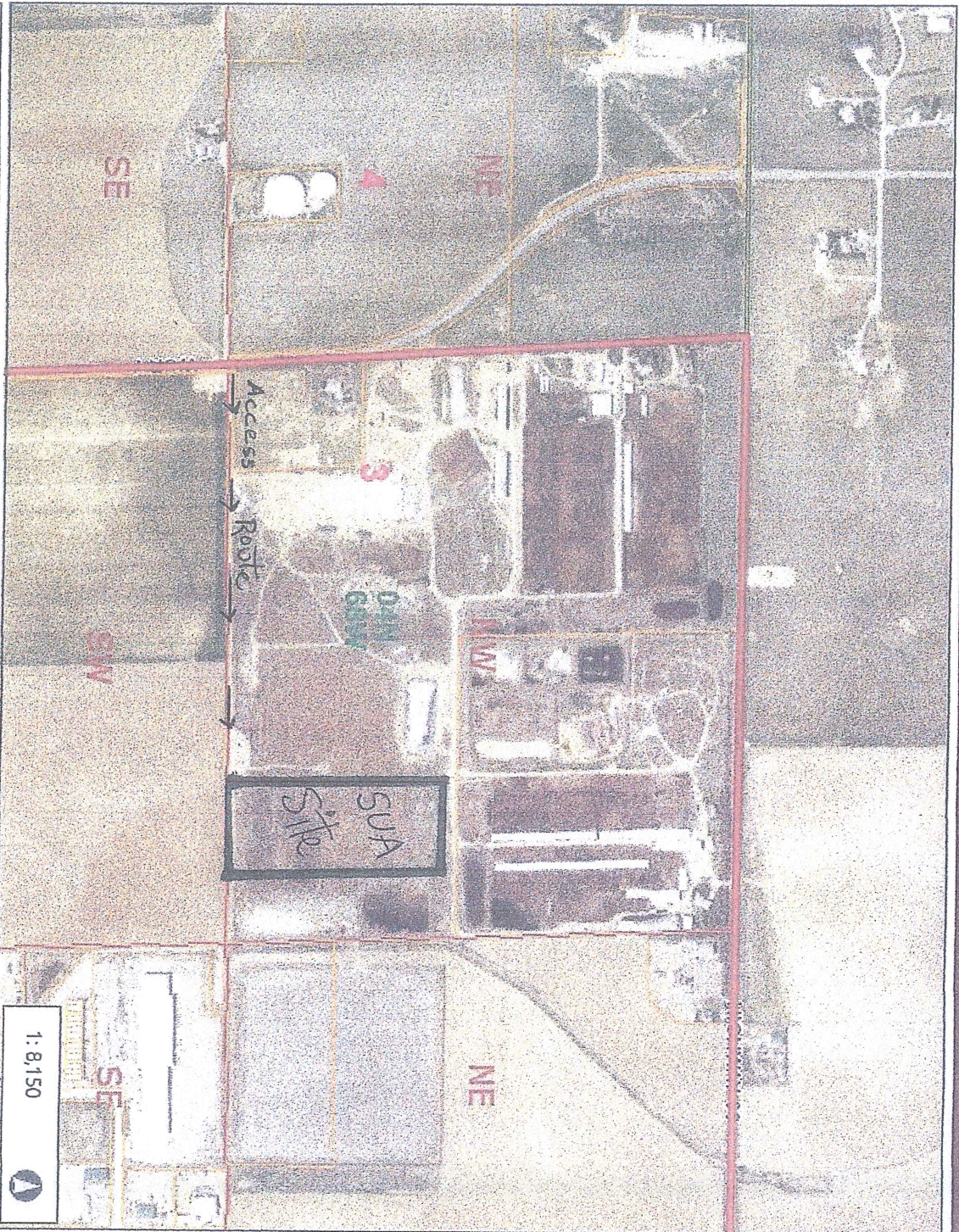
Petro Operating Company, LLC

By: Roger A. Parker  
Roger A. Parker, Manager



# Exhibit A Surface Use Area

WELD COUNTY  
ONLINE MAPPING



WGS\_1984, Web\_Mercator\_Auxiliary\_Sphere  
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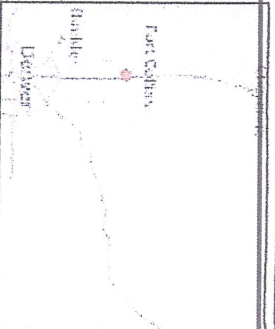
This map is a user generated static output from an internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

1: 8,150



- Legend**
- ☐ Parcels
  - ☐ Address Label
  - ☐ Highway
  - ☐ Township / Range
  - ☐ Section
  - ☐ Quarter Section
  - ☐ County Boundary



## Notes

Flaschierem SUA Site  
T4N-R68W Section 3: Part SENW