

## EASEMENT, RIGHT-OF-WAY, AND SURFACE USE AGREEMENT

This Easement, Right-of-Way and Surface Use Agreement ("Agreement") is entered into and effective this 8/15/2017, by and between **Stephen James Swinney** ("Owner"), whose address is 9616 Oak Reserve Ln, Elk Grove, CA 95758, and **DPOC, LLC** ("Operator"), with offices at **1821 Blake St., Suite 2B, Denver, CO 80202** sometimes referred to each as a "Party," or collectively as the "Parties."

WITNESSETH:

For and in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **OWNERSHIP.** Owner is the surface owner of certain lands more particularly described in Exhibit A, which are located in:

**Township 9 North, Range 60 West of the 6<sup>th</sup> P.M.**  
Section 35: Southwest Quarter (SW/4)  
Weld County, Colorado  
(the "Lands").

Operator, or its affiliates, owns a working interest, leasehold interest, or other interest under certain oil and gas leases covering lands adjacent to the Lands and may in the future own oil and gas leases that cover the Lands and lands pooled therewith. (the "Lease," or "Leases").

### 2. **OIL AND GAS OPERATIONS ON THE LANDS.**

A. Operator desires to drill, complete, operate, produce and maintain oil or gas wells (the "Wells") on the Lands or the Leases, the subsurface locations of which may be under lands other than the Lands. In order for Operator, its agents, consultants, successors or assigns to explore, permit, survey, obtain consents and waivers, develop, drill, construct, complete, recomple, produce, maintain, rework, equip, deepen, stimulate, re-stimulate, assess, evaluate, inspect, test, update, upgrade, operate, secure, and transport production from the Wells and all facilities associated therewith including, but not limited to, access roads (including existing roads on the Lands) ("Access Roads"), pipelines, infrastructure, equipment, surface appurtenances and production facilities including but not limited to emission control devices, vapor recovery towers, vapor recovery units, flowlines, , temporary above ground water lines, temporary above ground completion fluid pipelines, gas lift lines, meters and housing, separators, tank batteries, MLVTs, LACT units, electrical lines, utility lines and any other facilities necessary for Operator to conduct operations on the Wells (each a "Facility," collectively, the "Facilities"), Owner recognizes it is necessary that Operator, its agents, consultants, successors or assigns enter and utilize a portion of the Lands in order to operate and maintain the Wells and Facilities. Owner and Operator desire to mitigate any surface damage to the Lands and to set forth their agreements with respect to future operations on the Lands, to accommodate operations and development of the surface, and to provide for cooperation between the Parties and the mutual enjoyment of the Parties' respective rights in and to the Lands. This Agreement sets forth the Parties' rights and obligations regarding the development and use of the Lands by Owner and operations conducted by Operator. This grant of right to use the surface shall not include the right to place facilities on the surface that are used to transport oil, gas, and other products from wells other than the Wells that are the subject of this Agreement. Any easements for roads, gathering lines, pipelines, transmission lines, fiber optic lines, or other facilities used to accommodate products from other wells shall be the subject of negotiation between the Owner and the third party proposing such easements. Operator shall not have the right to drill more than 20 wells on the Land.

### 3. **SURFACE EASEMENT AND RIGHT-OF-WAY; SUBSURFACE EASEMENT.**

A. In those circumstances where the Operator owns, or is lessee of, the minerals underlying the Lands, Owner acknowledges and understands that Operator holds an exclusive easement and right-of-way burdening the Lands with all the rights and privileges granted under this Agreement. If operator does not drill 20 wells on the Lands by September 1, 2022, in order to retain the exclusivity of its easement, Operator must pay to Owner the per well payment referenced in the Letter Agreement times the difference between 20 and the number of wells Operator has drilled on the Lands as of said date.

B. Subject to the payment obligation referenced in the previous paragraph Owner hereby grants, assigns, and conveys to Operator, its successors and assigns and each of their agents, employees, contractors and subcontractors, an exclusive easement and right-of-way on, over, across, and through the

Lands for the purpose of drilling, completing, operating, securing, producing, evaluating, deepening, reworking, equipping, maintaining, plugging and abandoning of Wells, constructing, using and maintaining Access Roads and locating, constructing, entrenching, operating, maintaining, repairing, altering, replacing and removing the Facilities and all necessary appurtenant facilities, for the purposes specified in this Agreement including ingress and egress from the Facilities across the Lands.

C. Owner grants Operator the right to drill, complete, operate and maintain Wells on the Lands that produce oil, natural gas, produced liquids, and associated hydrocarbons from lands other than the Lands and lands pooled with the Lands.

D. Owner further grants Operator a subsurface easement through the Lands for the purpose of drilling, completing, operating, re-stimulating, reworking and maintaining oil and gas wells that may produce and drain oil, natural gas, produced liquids and associated hydrocarbons from lands other than the Lands and lands pooled with the Lands.

#### **4. LOCATION/OIL AND GAS OPERATIONS AREA.**

The locations of Wells, the Access Roads to the Well sites and Facilities to be constructed on the Lands shall be as shown on Exhibit A. Except as shown on Exhibit A, the Lands may not be disturbed except in the case of an emergency, in which case, the lands disturbed by the emergency event will be fully restored to their preexisting condition.

#### **5. CONDUCT OF OPERATIONS.**

Operator's operations on the Lands will be conducted pursuant to the terms of the Leases, this Agreement, the rules and regulations of the Colorado Oil & Gas Conservation Commission ("COGCC"), applicable Colorado statutes and case law, and any applicable federal statutes and case law. This Agreement does not create in Owner a private right to enforce the rules and regulations of the COGCC. However, Owner reserves all rights available to it under the law.

#### **6. COMPENSATION AMOUNT.**

The Parties acknowledge that Operator will provide Owner with certain good and valuable consideration, as described in that confidential Letter Agreement of even date herewith, prior to the commencement of drilling operations for each Well drilled which consideration is agreed to be and constitutes full, consideration for detriment, depreciation, injury, or damage to the Lands or crops growing thereon that may occur as a result from Operator's legal and normal industry operations pursuant to this Agreement. Subsequent operations related to the Wells including but not limited to refracs, recompletions, deepening, or redrilling, except in case of emergency, shall require prior notice to Owner. Operator shall pay Owner actual damages caused by said subsequent operations.

#### **7. ADDITIONAL SURFACE USE PROVISIONS, ACCESS ROADS, AND FACILITIES.**

With respect to its operations on the Lands, Operator and Owner will comply with the following provisions:

##### **A. Access Roads:**

(i) Owner shall provide Operator with continuous access to the Lands, Wells, Facilities and all associated oil and gas operations, equipment and areas associated therewith over the roads described in Exhibit A. (Including those roads described in Exhibit A that are located on the E1/2E1/2SE1/4 of the section 34)

(ii) Operator will maintain all Access Roads in good repair and condition, and in accordance with COGCC regulations, state laws, and other applicable regulatory or statutory frameworks.

##### **B. Surface Restoration:**

Upon permanent cessation of Operator's operations on the Lands, all areas thereof occupied or utilized by Operator will be restored by Operator to their condition immediately prior to operations as nearly as is reasonably practicable, and according to COGCC regulation.

C. **Other:**

(i) Operator will install culverts on the Lands that may be necessary to maintain drainage and irrigation in a manner equivalent to conditions upon the Lands immediately prior to operations as nearly as is reasonably practicable.

(ii) If by reason of the negligence of the Operator in the conduct of its operations pursuant to this Agreement or the Leases, there is damage to personal property of the Owner, including, but not limited to, irrigation wells, fences, culverts, bridges, pipelines, ditches, or irrigation systems, and for which Owner has not been previously compensated under this Agreement, Operator will repair or replace such items after consultation with and to the reasonable satisfaction of the Owner. Owner will notify Operator of any items damaged after the Wells have been drilled and completed and Operator will repair or replace such items within 30 days of notice, unless otherwise agreed to by the Owner and Operator.

(iii) Operator agrees that all trash, refuse pipe, equipment, liquids, chemicals, or other materials brought on the Lands that are not necessary for continued operations of the Wells will be removed and disposed away from the Lands no later than 30 days after the completion of the Wells. No such items will be burned or buried on the Lands.

(iv) Additionally, the well sites shall be kept free and clear of all noxious weeds, unsightly growth and trash either during drilling operations or after completion and production.

(v) Operator agrees to fence off the perimeter of the well sites with temporary fencing if reasonably requested by Owner. Operator will also install cattle guards or gates where reasonably necessary.

(vi) There shall be no reserve pits or disposal of oilfield waste on or under the Land.

(vii) This Agreement does not grant Operator the right of underground gas storage or sequestration.

**8. DEFAULT AND RIGHT TO CURE.**

In the event of alleged default by Operator, Owner will notify Operator, by certified mail, return receipt requested, of the alleged default. Operator will have 30 days from receipt of the written notification in which to dispute or otherwise respond to the notification before Owner may pursue other remedies of the alleged default. If Operator cures the alleged default within 30 days of Owner's notice, or if the alleged default is of a nature that cannot be cured within 30 days, then if Operator commences curing the alleged default within that 30 day period and diligently pursues such cure, then no default shall be deemed to have occurred.

Except as otherwise agreed in writing, no waiver by Owner of any breach by the Operator of any of its obligations, agreements, or covenants hereunder will be deemed to be a waiver of any subsequent or continuing breach of the same, nor will any forbearance by Owner to seek a remedy for any breach by the Operator be deemed to be a waiver by Owner of its rights or remedies with respect to such breach.

Any damages awarded to either party under this Agreement shall be limited to only the actual damages incurred by such party, and neither party shall be liable for consequential, incidental, punitive, exemplary or indirect damages in tort or in contract, or under any legal theory, and all such damages are hereby excluded and waived by the Parties and the exercise of the rights of any party hereunder.

**9. INDEMNITY/RELEASE.**

Owner hereby releases and agrees to hold harmless Operator, its agents, successors and assigns from any and all liability and further payment, other than what has been provided in this Agreement, for customary and normal damages on the Lands which arise from, out of or in connection with the Operator's operations on the Lands, but only as to those operations described in and permitted by this Agreement, and for those operations which the Compensation Amount has been paid and received by Owner pursuant to this Agreement.

Operator hereby releases and agrees to hold harmless Owner from any and all liability arising from Owner's non-negligent operations on the Lands.

Operator agrees to indemnify and hold Owner harmless from any and all claims, damages and causes of action arising out of and caused by Operator's operations on the Lands that may be asserted by any of Operator's agents, employees, subcontractors, contractors or persons entering upon the Lands at the request of Operator; with the exception of any claims, damages, and causes of action that arise from Owner's gross negligence or willful and wanton misconduct.

**10. WAIVER OF COGCC NOTICES AND OTHER REGULATORY MATTERS.**

A. Owner hereby waives the following notices and consultations:

- (i) Rule 305.a.: Notice of Intent to Conduct Oil and Gas Operations;
- (ii) Rule 305.c.(1): Oil and Gas Location Assessment Notice;
- (iii) Rule 305.c.(2): Buffer Zone Notice;
- (iv) Rule 305.f.: Statutory Notice to Surface Owners;
- (v) Rule 305.h.: Move-In, Rig-Up Notice;
- (vi) Rule 306.a.: Surface Owner Consultation and Meeting Procedures;
- (vii) Rule 305.f.(4): Notice of Subsequent Operations; and
- (viii) Any other notice or consultation requirements of the COGCC.

B. Owner shall not object or protest any Application for Permit to Drill (Form 2) and Oil and Gas Location Assessment (Form 2A) filed by Operator with the COGCC. Subject to this Agreement, Owner agrees to allow Operator to locate the Wells and Facilities anywhere on the Lands.

C. Owner hereby waives any right granted by COGCC rule to comment on the Form 2A, to request an extension of the comment period, to request an onsite inspection pursuant to COGCC policy, and to appeal the approval and issuance of the Form 2A, and any related Form 2.

D. Owner shall not oppose Operator, its agents, consultants, attorneys, successors and assigns in any COGCC or other administrative or governmental proceedings related to Operator's operations, including but not limited to permitting, formation of drilling units, well spacing, well density, pooling, drilling, completion, stimulation, re-stimulation, workovers, deepening and recompleting, provided that Operator's position and contemplated undertakings in such proceedings are consistent with this Agreement and are not in violation of applicable law. Owner will provide Operator, its agents, consultants, attorneys, successors and assigns with any and all written support they may reasonably require to obtain permits from the COGCC or other applicable governmental body.

E. Owner understands and acknowledges that the COGCC has rules and regulations that apply to the distance between a wellhead and public roads, production facilities, building units, occupied buildings, and surface property lines, among other things. Owner hereby waives its right to object to the location of any Well, Access Roads and Facilities on the basis of setback requirements in the rules and regulations of the COGCC, including, but not limited to, the 150 foot setback from surface property lines and other requirements of rules 603.a.(2), and 604.a, except that the Parties intend to rely upon one or more exceptions of rule 604.b of the rules and regulations of the COGCC relating to property lines and urban mitigation areas or designated outside activity areas, as those terms may change or be defined and amended from time to time. For the operations contemplated by this Agreement, Owner hereby waives the Exception Zone, Buffer Zone, Urban Mitigation Area, and High Occupancy Building setback distances, as required by COGCC rules and regulations.

F. Owner grants consent to locate the Wells greater than 50 feet from an existing well pursuant to COGCC Rule 318A.c. Owner grants consent to locate Wells outside of the GWA windows as defined in COGCC Rule 318A.a.

G. Owner understands that Operator may provide a copy of this Agreement to the COGCC in order to obtain a waiver, exception location, or variance from the COGCC rules or from a local jurisdiction.

11. **NOTICES.**

Subject to the terms, conditions, and covenants of this Agreement written Notice by either Party will be promptly served to the other Party by United States mail, postage prepaid and addressed to either Party, or to such other place as either Party may from time to time designate by notice to the other, at the following addresses:

Owner  
Stephen James Swinney  
3939 58<sup>th</sup> Street  
Sacramento, CA 95820  
916-230-7526

Operator  
DPOC, LLC  
1821 Blake St., Suite 2B  
Denver, CO 80202  
Attn: Land Department

Owner agrees to notify any surface tenant or other third party that may be affected by Operator's operations on the Lands and Owner may allocate the payments made hereunder with such surface tenant as mutually agreed upon between themselves. Neither this Agreement nor any operations arising hereunder shall create any rights, obligations or liability between Operator and such third parties.

12. **ADVICE TO TENANTS.**

Owner agrees to contact any and all tenants of the Lands or any other third parties utilizing the surface of the Lands that may be affected by Operator's activities on the OGOA. It will be Owner's sole responsibility to advise such third parties of the existence of this Agreement.

13. **BINDING EFFECT.**

The terms, conditions, covenants, and provisions of this Agreement will inure to the benefit of and will be binding upon the Parties hereto, their respective heirs, agents, representatives, successors or assigns.

14. **RECORDING.**

The Parties agree Operator may record this Agreement in the real estate records of the county in which the Lands are located.

15. **ENTIRE AGREEMENT.**

Except for that certain Letter Agreement of even date herewith between Owner and Operator, this Agreement contains the entire agreement between the Parties and may not be modified orally or in any other manner other than by written agreement signed by all Parties or their successors or assigns.

16. **LETTER AGREEMENT.**

The Owners and DPOC shall execute a confidential Letter Agreement, dated of even date herewith, containing the terms and conditions of the Compensation Amount arising under this Agreement.

17. **REASONABLE ACCOMMODATION.**

Owner acknowledges uses and operations upon the Lands by Operator under this Agreement are in full satisfaction of the requirement that Operator conduct its oil and gas operations in a manner that accommodates Owner. Owner further acknowledges Operator's uses and operations upon the Lands as provided herein constitute "Reasonable Accommodation" by Operator, its agents, consultants, successors and assigns as provided for under Colorado Revised Statute 34-60-127.

18. **TERMINATION.**

This Agreement will terminate concurrently with the Leases as they relate to Operator's or its affiliates' rights to explore, drill, and produce oil, natural gas, and associated hydrocarbons from the lands or adjacent to the Lands. No act or failure to act on the part of the Operator shall be deemed to constitute an abandonment or surrender of this Agreement or of any part of it, except upon recordation by Operator of an instrument specifically terminating this Agreement. To the extent a moratorium or a restrictive governmental law, rule or regulation prevents a Party from performing the operations herein described, this Agreement shall be extended for such period of time that the moratorium or restrictive governmental law or regulation is in place. Notwithstanding the termination of this Agreement, Operator may access the Lands to plug and abandon the Wells and to reclaim the Lands as provided in this Agreement and the

Leases and for such other purposes as necessary to comply with any law, rule, or regulation governing Operator's operations. Upon Abandonment, Operator will remove flow lines.

19. **COUNTERPARTS.**

This Agreement may be executed by facsimile or electronic mail, in counterparts, each of which will be considered an original and enforceable against either Party.

20. **GOVERNING LAW AND VENUE.**

This Agreement will be governed by, construed and enforced in accordance with the laws of Colorado. Venue shall be deemed to be in the county where the Lands are located.

21. **AUTHORITY OF SIGNATORIES.**

The signatories below declare, warrant and represent that they have the authority to enter into this Agreement on behalf of their respective principals, if any.

22. **SUCCESSORS.**

This Agreement constitutes an easement, right-of-way, and covenant running with the Lands and will be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective agents, consultants, affiliates, administrators, trustees, heirs, executors, successors or assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the day and year first written above.

*(The remainder of this page is intentionally left blank).*

Operator:  
DPOC, LLC

By: [Signature]  
Name: Jamison McIlvain  
Title: Executive Vice President

Owner:  
Stephen James Swinney

By: [Signature]  
Name: Stephen James Swinney

**ACKNOWLEDGMENTS**

STATE OF Colorado )  
 )ss.  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by Stephen James Swinney.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
 )ss.  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me on this 5 day of September, 2017, by Jamison McIlvain, acting as Executive Vice President on behalf of DPOC, LLC.

Witness my hand and official seal.

My commission expires: March 20, 2018

(SEAL)

\_\_\_\_\_  
Notary Public

**JODY FOURNIER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20144011927  
COMMISSION EXPIRES MAR. 20, 2018**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Sacramento )  
On 08/31/2017 before me, Myhanh Truong, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Stephen James Swinney  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

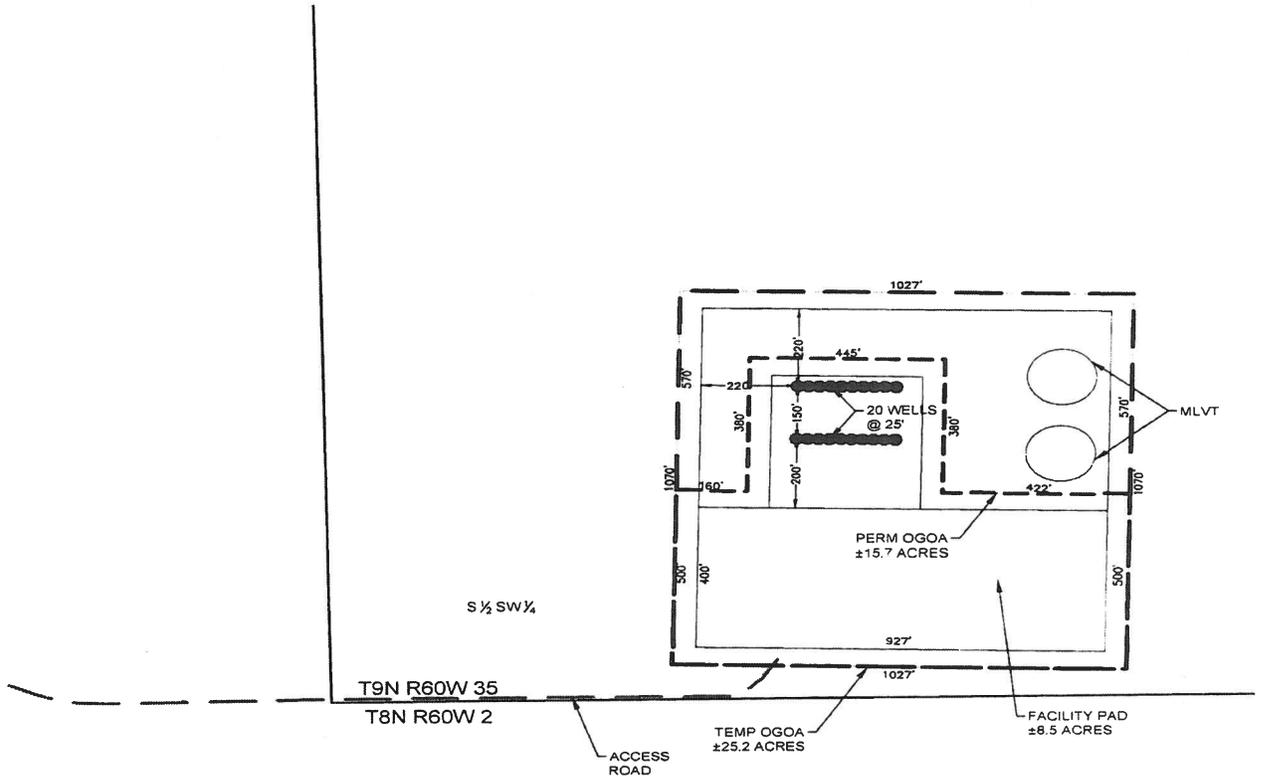
**Description of Attached Document**

Title or Type of Document: Easement, Right-of-way, and Surface use Agreement.  
Document Date: No date. Number of Pages: 9 pages.  
Signer(s) Other Than Named Above: No other signers.

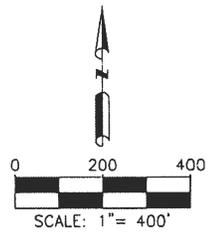
**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Stephen James Swinney Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  Partner —  Limited  General  
 Individual  Attorney in Fact  Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_

# EXHIBIT A OGOA



PARCEL OWNER:  
SWINNEY, STEPHEN JAMES (90%)  
SWINNEY, HEDRICK DEUL (HEIRS OF) 10%



**DISCLAIMER**  
THIS PLAN DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND SHOULD NOT BE RELIED UPON TO DETERMINE BOUNDARY LINES. PROPERTY OWNERSHIP OR OTHER PROPERTY INTERESTS, PARCEL LINES IF DEPICTED HAVE NOT BEEN FIELD VERIFIED AND MAY BE BASED UPON PUBLICLY AVAILABLE DATA THAT ALSO HAS NOT BEEN INDEPENDENTLY VERIFIED.

<b>PREPARED BY</b>  7395 Hilltop Circle Denver, CO 80231 (303) 928-7128 www.ascentgo.com	<b>FIELD DATE:</b> N/A	<b>SITE NAME:</b> PINTAIL PAD	<b>PREPARED FOR</b> 
	<b>DRAWING DATE:</b> 08-30-17	<b>SURFACE LOCATION:</b> S 1/2 SW 1/4 SEC. 35, T9N, R60W, 6TH P.M. WELD COUNTY, COLORADO	
<b>BY:</b> MLP	<b>CHECKED BY:</b> NC		