

AMENDMENT TO AGREEMENT FOR SETTLEMENT OF SURFACE DAMAGES  
AND GRANT OF RIGHTS AND WAIVERS

THIS AMENDMENT to Agreement for Settlement of Surface Damages and Grant of Rights and Waivers ("Amendment") is effective this 22<sup>nd</sup> day of October, 2019, by and among Kerr-McGee Oil & Gas Onshore, LP ("Kerr-McGee"), with an address of 1099 18<sup>th</sup> St., Suite 1800, Denver, CO 80202, and John L Cummings and Jennifer L Cummings ("*Surface Owner*"), whose address is PO Box 814, Windsor, CO 80550. Kerr-McGee and the Surface owners are sometimes referred to hereinafter individually as a "Party" and together as the "Parties"

RECITALS

WHEREAS, the Parties have executed that certain Agreement for Settlement of Surface Damages and Grant of Rights and Waivers dated as of March 17, 2019 relating to real property in the NW/4 of Section 19, Township 5 North, Range 67 West, Weld County, Colorado (the "SDA"); and

WHEREAS, the Parties desire to amend the SDA as set forth below.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual covenants contained in the SDA and herein, the Parties agree as follows:

1. Attachment 1. The Parties hereby agree Attachment 1 in the SDA is hereby deleted in its entirety and replaced with Amended Attachment 1, which is attached to this Amendment and incorporated herein by reference, all references in the SDA to Attachment 1 are hereby replaced with Amended Attachment 1.

2. Ratification/Superseding Effect. Except as specifically amended by this Amendment and except to the extent necessary to conform to and incorporate the attached Amended Attachment 1 and the terms of this Amendment, the terms and conditions included in the SDA shall continue in full force and effect. In the event of a conflict between this Amendment and the SDA as to a matter covered herein, this Amendment shall control.

3. Binding on Successors and Assigns/Covenant that Runs with the Land. This Amendment and the SDA are binding upon the Parties and their successors and assigns and inure to their benefit. This Amendment and the SDA shall be covenants that run with the land.

4. Counterparts. The Parties may execute and deliver this Amendment in any number of counterparts, including facsimile and .pdf format counterparts, each of which is deemed an original, but all of which constitute the same instrument.

5. Recording. This Amendment shall be recorded with the Clerk and Recorder of Weld County, Colorado.

6. Governing Law. This Amendment shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the undersigned Parties have caused this Amendment to be executed by duly authorized representatives on the dates set forth in the acknowledgments, to be effective on the date first above written.

*[Signature and acknowledgment pages follow]*

**Surface Owner**

**Kerr-McGee Oil & Gas Onshore LP**

By: John L. Cummings  
Name: John L. Cummings

By: David J. Woest  
~~Lindsay N. Jaffee~~ David J. Woest  
Agent & Attorney-in-Fact  
8E  
RES

By: Jennifer L. Cummings  
Name: Jennifer L. Cummings

ACKNOWLEDGEMENTS

STATE OF COLORADO     )  
  )ss.  
COUNTY OF Weld     )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of October, 2019, by John L. Cummings

Witness my hand and official seal.  
My commission expires: 03-10-2023

Kelli Antista  
Notary Public  
**KELLI ANTISTA  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20154010048  
MY COMMISSION EXPIRES 03/10/2023**

STATE OF COLORADO     )  
  )ss.  
COUNTY OF Weld     )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of October, 2019, by Jennifer L. Cummings

Witness my hand and official seal.  
My commission expires: 03-10-2023

Kelli Antista  
Notary Public  
**KELLI ANTISTA  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20154010048  
MY COMMISSION EXPIRES 03/10/2023**

STATE OF COLORADO     )  
  )ss.  
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of October, 2019, by David J. West ~~Lindsay N. Jaffee~~, Agent & Attorney-in-Fact of Kerr-McGee Oil & Gas Onshore LP, on behalf of said limited partnership.

Witness my hand and official seal.  
My commission expires: 01-22-2023

Robert Evan Johnson  
Notary Public

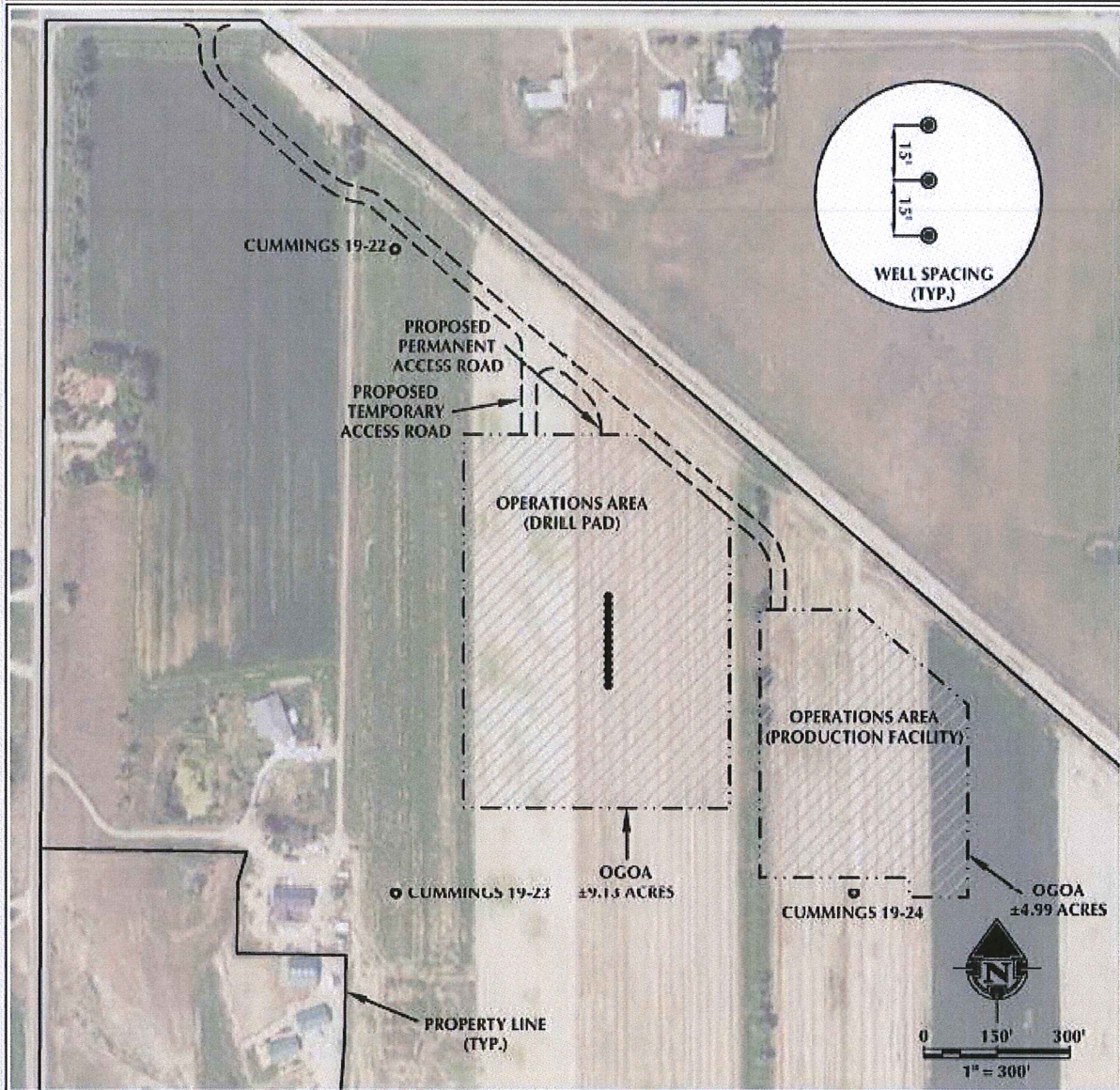
**ROBERT EVAN JOHNSON  
NOTARY PUBLIC - STATE OF COLORADO  
Notary ID #20194002546  
My Commission Expires 1/22/2023**



# AMENDED ATTACHMENT 1

## CUMMINGS

NW1/4 SECTION 19, TOWNSHIP 5 NORTH, RANGE 67 WEST, 6TH P.M.



### LEGEND

- OPERATIONS AREA
- EXISTING WELL
- PROPOSED WELL



**609 CONSULTING, LLC**

LOVELAND OFFICE  
6200 North Franklin Avenue  
Ft. Collins, Colorado 80526  
Phone: 970.776.0311

SHERIDAN OFFICE  
1400 Jackson Avenue  
Sheridan, Wyoming 82801  
Phone: 307.677.0029

DATE SURVEYED: N/A

DATE: 10/23/18

DRAFTER: JHL

REVISED: 10/7/19

DATA SOURCES:

- AERIAL COURTESY OF ESRI, INC.

PREPARED FOR:

**Kerr-McGee Oil & Gas Onshore L.P.**

AGREEMENT FOR SETTLEMENT OF SURFACE DAMAGES  
AND GRANT OF RIGHTS AND WAIVERS

This Agreement for Settlement of Surface Damages and Grant of Rights and Waivers ("*Agreement*") is entered into as of March 17<sup>th</sup>, 2019, by and between John L Cummings and Jennifer L Cummings ("*Surface Owner*"), whose address is PO Box 814, Windsor, CO 80550, and Kerr-McGee Oil & Gas Onshore LP ( "*KMG*"), with offices at 1099 18<sup>th</sup> Street, Suite 1800 Denver, Colorado 80202. Surface Owner and KMG are sometimes referred to alone individually or together as a "*Party*" and together or as the "*Parties*."

Recitals

Surface Owner owns lands (the "*Lands*") situated in Weld County, Colorado described as follows:

Township 5 North Range 67 West of the 6th P.M.

Section 19: Part of the NW/4 also described as Parcel Number 095719000057

Weld County, Colorado

KMG owns an oil and gas leasehold interest in the Lands and desires to drill oil and gas wells and locate facilities on the Lands.

The Parties enter into this Agreement to settle certain surface damages relating to the location of oil and gas wells and facilities on the Lands and to memorialize other agreements and the grant of certain rights and waivers by Surface Owner.

Agreement

For and in consideration of the sum of ten dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Payment of Surface Damages for Wells and Related Facilities

(a) In connection with the drilling, completion, recompletion, operation and maintenance of the oil and gas wells and related facilities to be located within the Oil & Gas Operations Areas depicted on Attachment 1 (each, an "*OGOA*"), KMG shall pay to Surface Owner the sum set forth in that certain Agreement Regarding Compensation between Surface Owner and KMG entered into contemporaneously with this SDA. KMG will remit such payment to Surface Owner on or before KMG commences surface disturbing operations on the Lands in drilling the wells. The payment for each well shall be a one-time payment as full and final settlement and satisfaction for any and all detriment, depreciation, injury or damage of any nature to the Lands or crops growing thereon that may occur as a result of KMG conducting reasonable, non-negligent drilling and completion operations on the Lands, and continuing activities for the production and transportation of oil or gas from the wells on the Lands, or lands pooled therewith, including, without limitation, ingress to, egress from, and construction, use, maintenance, repair, replacement, and monitoring of the wells, the well locations and equipment, mud and reserve pits,

separators, tank batteries, flowlines and any and all other reasonable and customary uses of the Lands related to the operations and activities for the wells.

(b) Such payment shall not apply as settlement or satisfaction of damages caused by KMG's negligent or willful misconduct or violation of health safety or environmental laws on the Lands. KMG shall remain liable for damages caused by its negligence or willful misconduct in drilling, completing and producing from the wells that are the subject of this Agreement and for damages to personal property and crops caused by operations not contemplated by this Agreement. Notwithstanding any other provision herein to the contrary, KMG shall be liable for any and all damages caused by (1) violation of this Agreement or (2) violation of any Rule or Regulation of the Colorado Oil and Gas Conservation Commission ("COGCC"), provided that Surface Owner shall not have a private right of action to enforce any such Rule or Regulation. Compensation for additional surface damages occasioned by negligence on the part of KMG or for use of the Lands for operations not contemplated by this Agreement shall be negotiated between Surface Owner and KMG, but shall not affect the term or validity of this Agreement.

## 2. Well Sites and Related Facilities

This Agreement covers only those well sites and related facilities within the OGOAs depicted on Attachment 1, which will be provided prior to the commencement of surface disturbing operations on the Lands in drilling the wells and does not cover future wells that may be drilled at other locations on the Lands. In addition, this Agreement does not in any way limit the rights of KMG to drill additional wells on the Lands or exercise the rights consistent with its mineral ownership. KMG shall consult with Surface Owner, and Surface Owner and KMG shall reasonably accommodate one another regarding well locations, ways of ingress and egress, pipeline and tank battery/treater locations and tanker truck service areas with respect to any wells that may be drilled at other locations on the Lands.

## 3. Pipeline and Gathering Lines(s)

Surface Owner grants to Kerr-McGee Gathering LLC, an affiliate of KMG, or another third party gatherer designated by KMG, the right to locate on the Lands at locations to be mutually agreed upon by Surface Owner and KMG an easement and right of way for pipeline(s) for use related to operations on the Lands. Surface Owners agrees to work with KMG if an easement and right of way is required and execution will not be unreasonably withheld. KMG will provide consideration to the Surface Owner in a mutually agreed upon amount for the easement and right of way for the pipeline(s).

## 4. Additional Agreements of KMG

(a) KMG will commence restoration of the Lands as soon as practicable after all drilling and completion activities within the OGOAs are concluded. If requested by KMG, Surface Owner will execute a waiver of the reclamation timing requirement in COGCC Rule 1003.b until KMG has completed all drilling, completion and production operations within the OGOAs, provided that KMG will commence interim reclamation at the earlier of (i) one year following rig-release or (ii) 90 days following the date of first production from the wells drilled within the OGOAs. Except for those Lands within the OGOAs required for permanent and ongoing

maintenance operations, the Lands shall be restored as close as reasonably practicable to their condition when KMG first commenced operations on them.

(b) KMG will not construct open pits or drill wells for injecting water or gas into the subsurface of the Lands in conjunction with its drilling and completion operations on the Lands.

#### 5. Electrical Easement and Access

(a) In connection with the wells and related facilities located within the OGOAs, Surface Owner hereby grants, bargains, sells and conveys to KMG an easement and right-of-way on and across the Lands for the purpose of constructing, using and maintaining access roads, which roads are depicted on Attachment 1. The foregoing grant of easement and right-of-way is subject to prior existing rights, including exceptions, reservations and encumbrances of record. The location of the entrance of the access road is made subject to the approval of the governmental agency having jurisdiction over the public road where said access is located. Should the location of the entrance of the access road be denied by such governmental agency, the parties agree to negotiate in good faith a separate location for the access road on the Lands, with such location for the access road not to be unreasonably denied, withheld, or conditioned by Surface Owner.

(b) Surface Owner grants to KMG the right to locate on the Lands at locations to be mutually agreed upon by Surface Owner and KMG an easement and right of way for above-ground and subsurface utilities for use related to operations on the Lands, provided there will be no additional power poles installed on the Lands. Surface Owner agrees to execute, when requested by KMG, the form of easement and right-of-way attached to this SDA and labeled Attachment 2.

#### 6. Waivers

(a) Surface Owner, for itself and its successors and assigns, hereby waives the right to, and covenants not to, protest or object to the use of the surface of the Lands as provided in this Agreement. Surface Owner acknowledges that KMG and its successors and assigns may cite the waivers in this Agreement in order to obtain exceptions and variances from the COGCC or from any other state or local body having jurisdiction over oil and gas operations. Surface Owner agrees that this Agreement satisfies any requirement for a consent to an exception or variance signed by the surface owner, Building Unit Owner (as that term is defined in the COGCC Rules and any successor rules or amendments), homeowner or the like and agrees that KMG and its successors and assigns may provide a copy of this Agreement to the COGCC or to any other state or local body in satisfaction of such requirement. Furthermore, Surface Owner and its successors and assigns will provide KMG and its successors and assigns with all written waivers and other evidence of support they may reasonably require to obtain permits from the COGCC or any local jurisdiction, including waivers required from Building Unit Owners, homeowners and the like, but at no cost or expense to Surface Owner, and provided that nothing herein shall prohibit Surface Owner from reporting violations by KMG of any governmental laws, rules or regulations, including those of the COGCC, to the appropriate governmental authorities.

(b) With respect to wells and facilities located within the OGOAs, Surface Owner hereby consents to, and waives its right to protest or object to, surface well locations that are outside of designated GWA windows and surface well locations that are more than 50 feet from an existing well as provided in COGCC Rule 318A or any successor rule or amendment adopted by the COGCC, or in any rule or ordinance of a local jurisdiction, relating to the location of wells



within the Greater Wattenberg Area (GWA).

(c) Surface Owner further understands and acknowledges that COGCC rules and regulations govern the distance between a wellhead and public roads, production facilities, buildings, building units and surface property lines, among other things. With respect to wells and facilities located within the OGOAs, to the fullest extent possible, Surface Owner hereby waives all setback requirements in COGCC Rules 603 and 604 and any successor rules or amendments, including Exception Zone setbacks and any other state or local setback requirements or other laws, requirements or regulations that would prohibit or interfere with the rights of KMG and its successors and assigns to explore for and produce oil and gas from the Lands or other lands from within the designated OGOAs.

#### 7. Limitation of Liability, Release and Indemnity

(a) No Party shall be liable for, or be required to pay for, special, punitive, exemplary, incidental, consequential or indirect damages to any other Party for activities undertaken within the scope of this Agreement.

(b) Except as to claims arising out of pollution or environmental damage (which claims are governed by Section 8 below) or arising out of other provisions of this Agreement (which claims shall be governed by the terms of this Agreement), each Party shall be and remain responsible for its own liability for all losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation attorneys' fees and other costs associated therewith (all of the aforesaid herein referred to collectively as "*Claims*"), arising out of or connected with each Party's ownership or operations on the Lands, no matter when asserted, subject to applicable statutes of limitations. Each Party shall release, defend, indemnify and hold the other Parties, their officers, directors, employees, successors and assigns, harmless against all such Claims. This provision does not, and shall not be construed to, create any rights in persons or entities not a party to this Agreement, nor does it create any separate rights in Parties to this Agreement other than the right to be indemnified for Claims as provided herein.

(c) Upon the assignment or conveyance of a Party's entire interest in the Lands, that Party shall be released from its indemnification obligation for all actions or occurrences happening after such assignment or conveyance.

#### 8. Environmental Indemnity

The provisions of Section 7 shall not apply to any environmental matters, which shall be governed exclusively by the following, subject to the limitations of Subsection 7(a) above:

(a) "*Environmental Claims*" means all Claims asserted by governmental bodies or other third parties for pollution or environmental damage of any kind, arising from operations on or ownership of the Property or ownership of the oil and gas leasehold interests, whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith, including but not limited to any Claims arising from Environmental Laws or relating to asbestos or to naturally occurring radioactive material. Environmental Claims do not include the costs of any remediation undertaken voluntarily by any Party, unless such remediation is performed under the imminent threat of a Claim by a governmental body or other third party.

(b) “*Environmental Laws*” means any laws, regulations, rules, ordinances, or order of any governmental authority(ies), which relate to or otherwise impose liability, obligation, or standards with respect to pollution or the protection of the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 *et seq.*), the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*), the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j), the Hazardous Material Transportation Act (49 U.S.C. §§ 5101 *et seq.*), the Clean Air Act and the Toxic Substances Control Act (15 U.S.C. §§ 2601-2629).

(c) Kerr-McGee shall protect, indemnify, and hold harmless Surface Owner from Environmental Claims relating to the Lands or the oil and gas leasehold for the Lands that arise out of Kerr-McGee’s oil and gas operations on the Lands. Surface Owner shall protect, defend, indemnify and hold harmless Kerr-McGee from Environmental Claims relating to the Lands that arise out of Surface Owner’s operations and activities on the Lands.

#### 9. Exclusion from Indemnities

The indemnities of the Parties herein shall not cover or include any amounts which the indemnified Party is actually reimbursed by any third party. The indemnities in this Agreement shall not relieve any Party from any obligations to third parties.

#### 10. Notice of Claim for Indemnification

If a Claim is asserted against a Party for which the other Party would be liable under the provisions of Sections 7 or 8 above, it is a condition precedent to the indemnifying Party’s obligations hereunder that the indemnified Party give the indemnifying Party written notice of such Claim setting forth all particulars of the Claim, as known by the indemnified Party, including a copy of the Claim (if it is a written Claim). The indemnified Party shall make a good faith effort to notify the indemnifying Party within five days of receipt of a Claim and shall affect such notice in all events within such time as will allow the indemnifying Party to defend against such Claim.

#### 11. Termination

This Agreement shall expire five (5) years from the date set forth in the preamble if no oil and gas well has been commenced in any of the OGOAs by that date. After the commencement of a well within the time period specified herein, this Agreement shall remain in force and effect until the termination of the oil and gas lease associated with the leasehold underlying the lands.

#### 12. Non-Disclosure Statement

Surface Owner agrees not to disclose any of the terms of this Agreement to any third party. This provision excludes disclosure to legal counsel representing Surface Owner. Surface Owner understands that this Agreement will not be recorded and that KMG will record a memorandum of this Agreement.

#### 13. Binding Agreement

This Agreement shall be binding upon the respective successors and assigns of the Parties hereto.

**14. 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 either Party by virtue of the authorship of any of the provisions of this Agreement.


**15. Counterpart Signatures**

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


The undersigned have executed this Agreement as of the day first above written.

**Surface Owner**

By:   
Name: John L. Cummings

By:   
Name: Jennifer L. Cummings

**Kerr-McGee Oil & Gas Onshore LP**

By:   
Christopher P. Martin  
Agent & Attorney-in-Fact RES BM

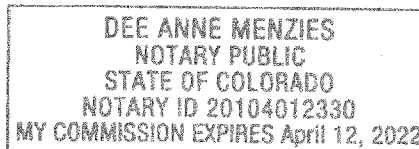
**ACKNOWLEDGMENTS**

STATE OF COLORADO )  
 )ss  
COUNTY OF Weld )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of March 2019, by John L. Cummings.

Witness my hand and official seal.

My commission expires 4-12-22



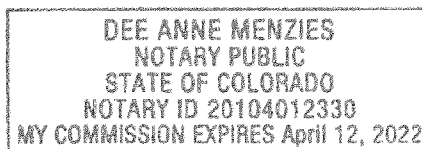
Dee Anne Menzies  
Notary Public

STATE OF COLORADO )  
 )ss  
COUNTY OF Weld )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of March 2019, by Jennifer L. Cummings.

Witness my hand and official seal.

My commission expires 4-12-22



Dee Anne Menzies  
Notary Public

STATE OF COLORADO )  
 )ss  
CITY AND COUNTY OF DENVER)

This instrument was acknowledged before me this 18<sup>th</sup> day of March 2019, by Christopher P. Martin, Agent & Attorney-in-Fact of Kerr-McGee Oil & Gas Onshore LP, on behalf of said limited partnership.

Witness my hand and official seal.

My commission expires 01/22/2023



Robert Evan Johnson  
Notary Public