

**KN
PRODUCTION
COMPANY**

A SUBSIDIARY OF
**KN
ENERGY**



KN Production Company
141 Union Blvd., Suite 400
P.O. Box 281304
Lakewood, CO 80228-8304
(303) 980-9340

Colorado Oil & Gas Commission
1120 Lincoln St.
Suite 801
Denver, Colorado 80203

Re: Surface Use and Damage Agreement

Attention: Mr. Ron ^{Schmela} ~~Schmelia~~

Dear Ron;

Enclosed please find the Surface Use and Damage Agreement Between KN Production, Company and Douglas Pass, Ltd. and Cathedral Ranch, LLC. This agreement cover a portion of the access road to the Federal 22-4 well site in the NW NW sec 22 Twp 2S Rge 101W and the location and access road to the Federal 22-12 well site in the NE SW sec 22 Twp 2S Rge 101W.

These agreements should allow you to complete the permitting on the Federal 22-12 location. If you have any questions or concerns please do not hesitate to contact the undersigned.

Sincerely,

Kenneth J Kundrik

SURFACE USE AND DAMAGE AGREEMENT

11-11-95
97-878-5717

This SURFACE USE AND DAMAGE AGREEMENT ("Agreement") is made and entered into effective the 1st day of June 1995, by and between the undersigned owner and lessee of the surface of the real property described below ("Owner") whose address is c/o J. Richard Livingston, Golden, Mumby, Summers & Livingston, P. O. Box 398, Grand Junction, CO 81502 and KN PRODUCTION COMPANY, a Colorado corporation ("KNPC"), whose address is P. O. Box 281304, Lakewood, CO 80228-8304.

RECITALS

A. KNPC proposes to drill two (2) wells for oil and/or gas production on the following described real property:

NW¼ NW¼ and NW¼ SW¼
Section 22, Township 2 South, Range 101 West
6th Principal Meridian.
Rio Blanco, Colorado

B. KNPC desires a drill site and right of way in support of its proposed drilling affecting the surface of Owner as more particularly described in the Surface Use Program attached hereto as Exhibit "A" and by this reference incorporated herein.

C. Owner, subject to the terms and conditions hereinafter set forth, is willing to grant to KNPC the surface use described in Exhibit "A."

AGREEMENT

NOW, THEREFORE, for and in consideration of the rights granted by Owner herein, KNPC agrees to provide and perform certain mutually agreed upon goods and services more specifically described on Schedule "A" attached (the "Services"). The Services shall be provided by KNPC and/or its vendors and contractors no later than October 1, 1995. Given the above, the parties covenant and agree as follows:

1. Premises. Owner hereby covenants to KNPC's use of the above-described real property as defined by the Surface Use Program, Exhibit "A" hereto, and this Agreement.

2. Term and Consideration. This Agreement shall remain in force and effect for so long as the pipeline installed pursuant to paragraph 1 is being used for the transportation of oil, gas and petroleum products, provided KNPC complies with the terms and obligations of this Agreement. This Agreement shall be for the sole purpose set forth in paragraph 1.

3. Nonexclusivity. Pursuant to Paragraph #9, KNPC's use of the surface hereunder shall be nonexclusive and Owner, its agents, designees, permittees, and assignees shall have the right to use and enjoy the Land covered by this Agreement at any time during the term of this Agreement for any purpose and retains the right to grant easements and rights-of-way across the land covered by this Agreement, so long as such use or other easements and rights-of-way do not materially interfere with KNPC's use and enjoyment of the rights granted herein. Owner agrees to notify KNPC of any activity which may endanger the integrity of KNPC's pipeline.

4. Abandonment. It is expressly made a condition of this Agreement that if KNPC, its successors or assigns, shall abandon the surface use for the stated purposes of this Agreement, then and in that event, all the rights herein granted shall cease and terminate, and the title to said surface shall be freed from the burden of this Agreement; and it is further agreed that nonuse of the surface or any portion thereof for the purposes of this Agreement for the period of one (1) year shall constitute an abandonment unless such nonuse is caused by market conditions, force majeure or other such condition that may result in nonuse. In the event of an abandonment, KNPC shall deliver to Owner a recordable instrument evidencing that the title to the surface so abandoned is free and clear of the burden of this Agreement and free and clear of liens, encumbrances, clouds upon or defects in the title created or permitted to be created by KNPC.

Upon abandonment of all or any portion of the surface, the lands so abandoned shall be reclaimed, revegetated and recontoured by KNPC at its expense to the end that the surface of the disturbed lands shall be returned to a condition as nearly as practicable to the condition of the undisturbed areas adjacent to the surface use. Such reclamation shall be accomplished in the manner specified in paragraph 8(d) below. If KNPC fails to commence good faith efforts contemplated in this paragraph, Owner may perform such activities for the account of KNPC, and KNPC shall reimburse the Owner for all reasonable expenses incurred. Upon cessation of use of any portion of the surface, the portion of the pipeline affected shall be timely and properly removed or abandoned in accordance with all laws, rules, regulations, orders and other requirements and in accordance with good industry practice.

5. Non-Assignability. Without the prior written consent of Owner, which may be withheld in the sole and absolute discretion of Owner, KNPC shall not have the right to assign all or any portion of the rights herein granted to KNPC, other than to an affiliate, parent, subsidiary of KNPC, or co-owner with KNPC.

6. Taxes. Owner shall remain liable for any property taxes assessed against the underlying fee.

KNPC shall pay that portion of all taxes attributable to the incremental increase, if any, as assessed by the County Assessor against the surface itself because of additional value placed thereon for tax purposes by reason of improvements placed upon the surface by KNPC. It shall be the Owner's burden to prove KNPC surface improvement increased the value of the property which must be documented in writing through the County Assessor's Office.

7. Exceptions. KNPC's rights hereunder are expressly subject to the following:

a. All reservations, limitations, and conditions of any underlying patents covering the surface, or any portion thereof, and the rights of any party pursuant thereto;

b. All grants, conditions, limitations, and reservations, if any, of record, or arising by operation of law, and the rights of any party pursuant thereto;

c. All easements or rights of way over or across the surface or any portion thereof;

d. The rights of any part under any oil, gas, mineral, or other leases, or surface owners' agreement or agreements, if any, covering all or any portion of the surface; provided any exploration for oil, gas and minerals does not unreasonably adversely impact KNPC's use of the surface within said leased area.

e. The rights of any party under any underlying deed constituting the record chain of title into Owner.

8. Covenants, Agreements and Indemnities of KNPC. During the term of this Agreement:

a. KNPC shall bury the pipeline installed by KNPC pursuant to paragraph 1 where situated on land cultivated for crops to a depth sufficient to allow 48 inches between the top of the pipe and the surface. KNPC shall use existing public roads for access to and from the pipeline and right of way granted by paragraph 1 where practicable.

b. Range improvements, such as fencing, gates, etc., if any, shall not be disturbed; or, where disturbance is necessary, KNPC shall leave such improvements in the original or better condition. KNPC shall maintain proper enclosures when work requires temporary removal of fencing.

c. KNPC shall maintain adequate water breaks on all slopes; if any;

d. KNPC shall affect a minimum of vegetative or soil disturbance, consistent with practical operations, and will smooth

and maintain all disturbed areas to conform as nearly as practical with the adjacent terrain, and provide and maintain adequate water drainage to minimize erosion; after the initial construction of the pipeline covered by this Agreement is completed, or upon completion of any subsequent maintenance or replacement of the facilities causing vegetative or soil disturbance, all disturbed areas shall be restored and reseeded by KNPC, and the reseeded shall be done by drilling with a drill equipped with a depth regulator, to assure even depth of planting. Seeding shall be done during the months of September and/or October, or at such other time as agreed between the parties hereto. The seeding shall be repeated until a satisfactory stand is obtained. All such restoration and reseeded shall be completed by KNPC using specification required by the Bureau of Land Management and the Colorado Oil and Gas Commission;

e. KNPC shall control any noxious weed infestations on lands disturbed from its operations;

f. KNPC shall comply with all present and future federal, state and local laws, rules, regulations, orders and other requirements applicable to KNPC's operations under this Agreement, including without limitation, laws, rules, regulations, orders and other requirements relating to the public or employee health and safety, pollution or protection of the environment, and any permits, approvals or judicial or administrative orders issued thereunder.

g. KNPC shall give Owner prompt notice of any of the following occurrences arising with regard to the surface or KNPC's activities thereon:

i. any spill, release, threatened release, or other occurrence that would constitute a violation of the provisions of any applicable laws, rules or regulations;

ii. the notification of any of the events set forth in paragraph 8(g)(1) above to any federal, state, or local governmental agency or authority;

iii. any notices, claims or allegations of environmental violations or contamination received from any federal, state or local governmental agency or authority or the filing or commencement of any judicial or administrative proceeding by any such agency; or

iv. the filing or threatened filing of any judicial or administrative proceeding by any private party alleging injury or threat of injury to the land, or to health, safety, or the environment.

h. Except for the willful misconduct or gross negligence of Owner, KNPC shall indemnify, defend and hold Owner

harmless from and against any and all damages, claims, causes of action, actions, losses, liabilities, fines, costs and expenses (including without limitation reasonable attorneys' fees and expenses and costs of investigation) resulting from KNPC's failure to comply with the laws, ordinances, rules and regulations set forth in paragraph 8(f) or otherwise resulting from or related to operations conducted by KNPC under this Agreement. KNPC shall further indemnify, defend and hold Owner harmless from and against any and all damages, claims, demands, causes of action, actions, losses, liabilities, fines, costs and expenses (including without limitation reasonable attorneys' fees and expenses and costs of investigation) arising out of damage to livestock and property or injury to or death of KNPC's employees or any other person or party, where such injury, death, or damage occurs because of or in connection with KNPC's operations under this Agreement.

i. KNPC shall indemnify and hold Owner harmless from and against any and all claims and liens upon the surface for labor or materials furnished to KNPC;

j. All gates shall be left open or closed, as found, and in those instances where the right of way shall cross existing fence lines, cattle guards shall be installed by KNPC;

k. All operations hereunder shall be conducted by KNPC in a fair and reasonable manner, and all necessary precautions shall be taken to avoid damage to gates, bridges, culverts, cattle guards, fences, dikes, and other stock watering facilities. All damage to the above-named facilities shall be reported to Owner within twenty-four (24) hours of notice to KNPC and shall be repaired by KNPC immediately, or as soon as is practicable, as nearly as possible to the condition existing prior to such operations. Any public hazard, such as a damaged bridge or culvert, caused by KNPC's use of the surface, shall be marked or barricaded and proper steps taken for the repair thereof by KNPC;

l. KNPC shall maintain insurance in an amount which a reasonable, prudent operator would deem sufficient to satisfy all damage and indemnity claims that may arise hereunder. KNPC shall provide to Owner from time to time, at Owner's written request, evidence of maintenance of any required insurance;

m. KNPC shall, at its sole expense, keep the surface free and clear of liens and encumbrances resulting from its activities hereunder;

n. KNPC shall repair at its sole expense any damage other than that which would occur through normal vehicular usage, caused by KNPC's usage. KNPC shall use all reasonable efforts to control dust. KNPC and its successors in interest and assigns, will instruct all guests, business customers and other persons using the surface by authority of or invitation of KNPC, to comply

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with the terms and provisions of this Agreement and KNPC also agrees that Owner may deny access, only upon prior written notification to KNPC, to any contractor, commercial customer or invitee of KNPC who fails to observe the terms and conditions of this instrument.

o. KNPC for itself, its guests, invitees, customers and assigns will not hunt, park (Except in cases of emergency), use firearms on, walk along or litter the lands presently owned by Owner. KNPC and its successors in interest and assigns, will instruct all guests, business customers and other persons using the surface by authority of or invitation of KNPC, to comply with the terms and provisions of this instrument.

p. KNPC shall finish initial drilling and completion operations on the well #22-12, on or before October 1, 1995, or be liable for \$5,000.00 per day on location after October 1, 1995, performing drilling or completion operations.

q. The rights herein granted shall be appurtenant to Well Site #22-12, and shall not be used in connection with the drilling or operation of any other wells not presently in existence, nor transferred or assigned separately from ownership of such well sites.

9. Indemnities of Owner. During the term of this Agreement, except for the willful misconduct and/or gross negligence of KNPC, Owner shall indemnify, defend and hold KNPC harmless from and against any and all damages, claims, causes of action, actions, losses, liabilities, fines, costs and expenses (including without limitation reasonable attorney's fees and expenses and costs of investigation) resulting from Owner's failure to comply with the federal, state and local laws, ordinances, rules and regulations or otherwise resulting from or related to actions conducted by Owner, its agents, employees or invitees. Owner shall further indemnify, defend and hold KNPC harmless from and against any and all damages, claims, demands, causes of action, actions, losses, liabilities, fines, costs and expenses (including without limitation reasonable attorney's fees and expenses and costs of investigations) arising out of damage to livestock and property or injury to or death of Owner, its agents, employees, invitees or any other person or party, where such injury, death or damage occurs because of or in connection with Owner's actions under this Agreement.

10. Specific Enforcement. KNPC and Owner agree that this Agreement is specifically enforceable, and in the event of KNPC or Owner's default with respect to any of the covenants and agreements hereunder on either's part to be kept and performed, KNPC or Owner shall pay to the other all costs and expenses of enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes of the State of Colorado, whether such remedy is pursued by filing suit or otherwise, including reasonable attorney's fees.

11. Termination. Subject to COGC governing regulations, this Agreement is made upon the condition that KNPC shall perform all the covenants and agreements set forth herein to be performed by it, and if at any time KNPC shall fail to fully and completely comply with all the covenants and agreements contained herein, and such failure shall continue, unless uncontested by KNPC, for a period of thirty (30) days after written notice of such default being given by Owner to KNPC at its address set forth above, then and in such event, this Agreement shall be terminated and the surface shall revert to Grantor; provided, however, such termination shall not release KNPC from any covenant, agreement or obligation hereunder on its part to be kept and performed at the time of such termination.

12. Termination Obligations and Rights.

a. Upon the termination of this Agreement or any portion thereof from any cause, KNPC shall surrender the surface to Owner and shall leave the surface in a condition which complies with all applicable laws and governmental regulations and orders.

b. KNPC shall have one hundred eighty (180) days after the termination of this Agreement to remove all of its personal property, if any.

c. The obligations of KNPC under paragraph 4 and 8(h), (i) and (m) shall survive any termination of this Agreement.

13. Water Rights. KNPC shall not have the right to use, and shall not take and use, any water stored on or flowing through the surface or originating from water wells on the property during the entire life of this Agreement without the written consent of Owner, which may be withheld in its sole and absolute discretion.

14. Notices. Any notice to be given to Owner or KNPC hereunder shall be in writing and shall be delivered personally, sent by overnight courier, sent by facsimile, or mailed in the United States Mail, certified mail, return receipt requested, to the addresses or the Owner and KNPC above set forth in the first paragraph of this Agreement.

15. No Conflicts. KNPC represents and warrants that none of its officers, directors, or principal shareholders are officers, directors, or employees of Owner, nor any of its direct or indirect subsidiaries or affiliates, nor is KNPC acting on behalf of any such officer, director or employee.

16. Non-Recourse to Owner. KNPC acknowledges and agrees that Owner has executed this Agreement, not personally but solely as Cathedral Ranch, LLC and Douglas Pass, Ltd. The agreements of KNPC contained herein shall only be enforceable against the property for the payment of any claims hereunder.

17. No Representations or Warranties. OWNER MAKES NO WARRANTY, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE LANDS DESCRIBED ABOVE, OR THE OWNERSHIP THEREOF.

18. Miscellaneous.

a. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Colorado, except to the extent that it will be necessary to comply with federal laws, rules and regulations.

b. Time is of the essence of this Agreement, and each of the terms and conditions hereof.

c. Subject to the requirements of paragraph 5 above, the terms, conditions and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

d. KNPC shall remove and properly dispose of all Trash, Brush and Debris from the property and shall not burn such Trash, Brush and Debris on Owner's property.

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

"OWNER"

DOUGLAS PASS, LTD.

By: Richard Smith
Name: Gayle Peery
Title: Gen'l Partner

CATHEDRAL RANCH, LLC, a Colorado
Limited Liability Company

By: Richard Smith
Name: J. Richard Livingston
Title: Manager

"KNPC"

KN PRODUCTION COMPANY

By: H. M. ...
Name: H. M. ...
Title: President

EXHIBIT "A"

**ATTACHED TO AND MADE A PART OF THAT CERTAIN SURFACE USE AND
DAMAGE AGREEMENT DATED EFFECTIVE JUNE 1, 1995 BETWEEN DOUGLAS
PASS, LTD ET AL. AND KN PRODUCTION COMPANY.**

Services to be provided by KNPC:

Blade and gravel the driveway and parking area at the Ranch Foreman's house and a turnaround at the Corrals. The location of the driveway is the first left after crossing the bridge on County Road 27. The corrals are approximately 10 miles on up County Road 27 on the left.