

## Surface Use and Damage Agreement

This surface use and damage agreement (“**Agreement**”) is made effective this 7<sup>th</sup> day of September, 2022, by and between **FPI Burlington Farms LLC** (“**OWNER**”), having an address of 4600 S Syracuse Street, Suite 1450, Denver, CO 80237-2766 and **WAVETECH HELIUM, INC.** (“**WHI**”), having an address of 1801 Broadway, Suite 600, Denver, Colorado 80202. OWNER and WHI may sometimes be referred to individually as a “**party**” or collectively as the “**parties**” in this Agreement.

### **RECITALS:**

1. OWNER owns certain surface estate acreage in the following described lands in Cheyenne County, Colorado (the “**Subject Lands**”), to-wit:

Township 12 South, Range 43 West, 6<sup>th</sup> P.M.  
Section 02: Lots 7(40.8), 8(40.44), 9(40.23), 10(40.28), 13(40.44), 14(40.38), 15(40.49), 16(40.45), 17(40.66), 18(40.70), 19(40.48) and 20(40.52), aka NW, S2
2. The oil and gas rights, including the right to explore for and develop oil and gas mineral interests underlying the Subject Lands are leased by WHI pursuant to certain Oil and Gas Lease dated October 12, 2021, between WHI and Owner’s predecessor-in-interest (the “**Oil and Gas Lease**”).
3. Pursuant to the terms of the Oil and Gas Lease, WHI will be entering upon the surface of the Subject Lands to explore for, develop, operate and may produce oil and gas therefrom, including more specifically helium. The parties desire to enter into this Agreement in an effort to accommodate each other’s use of the Subject Lands and to compensate OWNER for the use of roadways and portions of the surface of the Subject Lands in connection with the exploration and development of the oil and gas interests.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

#### **I. Right of Use.**

OWNER hereby grants to WHI, its agents, employees, contractors and assigns (“**Affiliates**”), non-exclusive access and surface rights over and across the Subject Lands for the purposes of surveying roads and well locations; building, maintaining and utilizing access roads; and drilling, completing and producing or abandoning wells, and related production, gathering and transportation facilities associated therewith. The rights of WHI to use the Subject Lands as set forth herein are non-exclusive, and Owner reserves the right to use all access roads and all surface and subsurface uses of the Subject Lands, and to grant successive easements on or across the Subject Lands on such terms and conditions as Owner deems necessary or advisable, provided that Owner’s use and all other uses authorized by Owner do not unreasonably interfere with the operations of WHI.

#### **II. Notice and Consultation**

- (a) Prior to commencing any operations, initiating the drilling of any well on the Subject Lands, WHI shall provide reasonable notice to Owner. Unless otherwise agreed in writing, the locations of the wells shall be in material compliance with those depicted in **Exhibit A** hereto

and shall be known as the “**Oil and Gas Operations Areas**”. Except as otherwise provided in this Agreement with respect to roads and pipelines, all of WHI’s activities shall be restricted to the Oil and Gas Operations Areas and Owner shall not occupy any portion of the Oil and Gas Operations Areas for any purpose (except as described herein), it being specifically agreed that the Oil and Gas Operations Areas are for the exclusive use of Operator. No gas treatment or gas processing facility shall be placed on the Subject Lands, other than standard wellsite heater treater, gas meter, separation, artificial lift equipment and dehydration equipment.

- (b) Unless otherwise agreed in writing, WHI’s access to its Oil and Gas Operations Areas and the placement of roads, pipelines and power lines (to the extent they are located outside of the Oil and Gas Operations Areas) shall be in material compliance with those depicted in Exhibit B.

### **III. Compensation**

As consideration for the access granted herein, and for any surface damages or damages to crops caused by the activities of WHI and its Affiliates on the Subject Lands, WHI shall pay the following to OWNER:

- A. [REDACTED] for each oil and/or gas well site located on the Subject Lands;
- B. [REDACTED] annually per rod for new or additional roadways created to access the well site; provided, however, no roadway shall be in excess of twenty-five (25) feet in width; and
- C. [REDACTED] annually for each oil and/or gas well completed as a producing well (or well capable of production) on the Subject Lands. Such payment shall be due on anniversary date of this Agreement first recited above after a well is established as producing.
- D. In the event any crops are damaged or destroyed under this agreement, WHI shall pay to Owner a fee equal to the fair market value of such crop losses (the “**Crop Loss Payment**”). The calculation for such Crop Loss Payment shall be calculated by the following formula: (Unit Price x Unit Yield Per Acre x Acres Damaged) = Damages. Prices for damaged or destroyed crops will be based on the revenue protection crop insurance program (or other crop insurance successor program) December futures price (utilizing the Chicago Board of Trade price for such crop, or equivalent if no longer utilized by the crop insurance program) as calculated by averaging the December futures prices for the months of February and October. If the crop is not included in the revenue protection crop insurance program, the price shall be based on the dominant trading exchange for that crop or another reputable market price provider, but the formula shall remain the same. Yield will be the individual farm operators proven yield, as evidenced by Landlord’s supporting documentation. The parties shall try in good faith to agree to the extent of damage and acreage affected at the time of any damage and/or destruction. If the parties cannot agree on any of the calculations, they shall have the area measured and extent of damage assessed by an impartial party with local industry knowledge of such as a crop insurance adjuster or extension agent. Crop Loss Payments shall be paid by Tenant within thirty (30) days after invoice therefor by Landlord (which invoice shall include receipts, invoices, and supporting documentation).

The compensation provided for herein is acknowledged by Owner as sufficient and in full satisfaction for damages and use of the Subject Lands caused or created by the reasonable and customary entry, rights-of-way, and operation and use of roads and well sites, but do not include damage to buildings, or improvements, or injuries to persons. This Agreement does not relieve WHI from liability due to WHI’s negligence or due to spills or discharges of any hydrocarbon or toxic substance or hazardous chemicals or wastes, or from leaks or breaks in WHI’s pipelines.

#### **IV. Oil and Gas Operations Areas**

Oil and Gas Operations Areas located on the Subject Lands shall be limited to no more than six (6) acres in size during drilling, completion, and reworking activities, and no more than three (3) acres permanently disturbed in size for producing wells, including any tank batteries constructed by WHI. WHI agrees to fence the pits and other dangerous areas and at all times keep its well sites in good order and free of litter, debris, trash, or spilled hydrocarbons. In the event that WHI does not encounter commercial quantities of oil, gas, or other hydrocarbons at any well location and determines the location to be a "dry hole," WHI shall promptly as required by the Oil and Gas Lease and COGCC regulations, fill in, smooth over, and clean up the well site and rights-of-way and shall restore and reseed the area as requested by Owner reasonable to its original condition. All cleanup and restoration activities shall be completed by WHI as soon as the reserve pit has been allowed to dry so that proper backfilling can be accomplished. If the reserve pit is not dry within six months of completion of drilling operations, it shall be pumped dry by WHI and the contents properly disposed of off the Subject Land pursuant to applicable law. In the event that any well drilled upon the Subject Lands is completed as a commercial producer of oil and/or gas, WHI shall promptly clean up the well site location and use only so much of the area as is reasonably necessary for its operations, and WHI shall restore such well location, reseeding as requested by Owner reasonable to its original condition.

#### **V. Road Construction and Use**

Subject to Section II, any roads constructed or used by WHI on the Subject Lands shall be constructed or used to the following specifications unless otherwise mutually agreed by the parties:

(a) To the maximum extent reasonably possible, WHI will use existing roads designated by WHI for its operations if such use is operationally and economically feasible in WHI's judgment reasonably exercised.

(b) All interior roadways within the Oil and Gas Operations Areas shall not exceed 25 feet in width for vehicles and equipment other than drilling rigs, which shall not exceed 30 feet in width. WHI shall control dust from all roadways through the application of an appropriate dust suppressant.

(c) If requested by Owner, access to the Subject Lands of Owner from any public road, or from the land of any adjoining Landowner, shall be controlled by a swinging metal gate in addition to a cattle guard.

(d) Culverts shall be placed in low areas for proper drainage on WHI constructed roads.

(e) No off-road travel is permitted and particularly no off-road travel which has the effect of widening the road or area of damage.

(f) The use and construction of roads by WHI on the Subject Lands is a non-exclusive use, and Owner may allow other parties to use said roads provided such use does not unreasonably interfere with WHI's operations.

(g) WHI shall maintain the portions of Owner's existing roads and WHI's newly constructed roads, used by WHI to access the Oil and Gas Operations Area to the extent necessary for WHI's needs and to the reasonable satisfaction of Owner, which maintenance may include blading, mowing grass to avoid fire danger, installing and cleaning cattle guards, and spraying for noxious weeds. This work shall be done at such reasonable times as Owner shall request.

(h) No roads on the Subject Lands shall be used by WHI for access to lands not subject to the Lease without a separately negotiated agreement. Any roads constructed outside of the Oil and Gas Operations Area will also be pursuant to a separately negotiated agreement.

## **VI. Pipelines**

Subject to Section II, any new pipelines constructed by WHI on the Subject Lands pursuant to this Agreement shall be constructed and maintained to the following specifications:

- (a) The top of each pipeline shall be buried at least 48 inches below the surface of the ground and shall be constructed in such a manner to safely permit farming operations.
- (b) WHI shall be responsible for backfilling, repacking, reseeding, and recontouring the surface so as not to interfere with Owner's present or future agricultural operations on the Subject Lands. If pipeline trenches settle so as to interfere with Owner's irrigation or farming activities, upon request by Owner, WHI shall fill in, repack, and level such trenches.
- (c) The pipelines referred to in this Agreement are limited to and include only those gathering system pipelines used in connection with wells drilled on the Subject Lands. WHI shall provide Owner with a plat showing the "as built" length and location of all pipelines promptly after their installation.
- (d) WHI shall not locate and/or construct, or cause to be located and/or constructed, compressor stations or gas, water or any other transportation pipelines on the Lands, which activities may only be done by separate written agreement of the parties.
- (e) Owner reserves the right to occupy, use, and cultivate the lands affected by such pipelines, and to grant such rights to others, so long as such use does not interfere with WHI's operations. No structures may be built by Owner within fifteen (15) feet of any pipeline.
- (f) If WHI fails to use any pipeline for a period in excess of twenty-four (24) consecutive months, the pipeline shall be deemed abandoned and WHI shall promptly take all actions necessary or desirable to clean up and remove the pipeline, or render the pipeline environmentally safe and fit for abandonment in place, and restore the surface. All such cleanup and mitigation shall be performed in compliance with all applicable federal, state, and local laws and regulations.

## **VII. Operations**

WHI's operations on the Subject Lands shall be conducted according to the following specifications:

- (a) WHI shall at all times keep its well sites and road rights-of-way safe and in good order, free of noxious weeds, litter and debris, and shall spray for noxious weeds upon reasonable demand by Owner as required by the rules of the Colorado Oil & Gas Conservation Commission ("COGCC").
- (b) WHI shall rehabilitate, restore, reclaim, and reseed all disturbed areas caused by WHI's construction activities, within six (6) months of completion of construction (which shall not include those three (3) acres which remain as permanently disturbed in size for producing wells) and shall rehabilitate, restore, reclaim, and reseed all remaining disturbed areas within six (6) months after termination of activities on such sites, unless inclement weather prevents such rehabilitation and restoration within that time period or within such other time as provided in the then applicable rules of the COGCC or the Oil and Gas Lease.
- (c) All cattle guards and fences installed by WHI shall be kept clean and in good repair and will become the property of Owner when WHI ceases ownership of its Oil and Gas Lease covering that portion of the Subject Lands.
- (d) WHI shall comply with all laws and regulations to prevent the release or discharge of any toxic or hazardous chemicals or wastes on the Subject Lands. Any spill of oil, grease, solvents, chemicals, or hazardous substances on the Lands which are reportable to regulatory authorities

under applicable law or regulations shall be immediately (within 24 hours) reported to Owner by telephone, fax, or e-mail, to be followed by copies of written notices which WHI has filed with regulatory authorities within five (5) business days after such filing.

- (e) No living quarters shall be constructed upon the Subject Lands, except that drilling crews and geologists or service personnel may use temporary "dog houses" during drilling, completion, or reworking activities.
- (f) WHI shall not fence any access roads without the prior consent of Owner.
- (g) WHI shall conduct operations and activities on the Subject Lands in accordance with, and shall strictly comply with all existing local, state, and federal laws, rules, and regulations. WHI shall also obtain any permit, consent, license, or other authorization required by law or by any governmental authority having jurisdiction.

#### **VIII. Indemnification**

WHI agrees to indemnify, defend and hold Owner harmless from and against all expenses (including attorney's fees), losses or damages resulting from or relating to WHI's operations on and use of the Subject Lands pursuant to this Agreement and the Oil and Gas Lease; provided, however, WHI will not indemnify, defend and hold Owner harmless from such expenses, losses or damages to the extent resulting from or relating to the negligence or willful misconduct of Owner or Owner's employees, contractors, third party lessees, guests or invitees.

#### **IX. Release**

To the maximum extent permitted by law, WHI releases and waives and discharges Owner and, if applicable, Owner's officers, directors, employees, agents, successors, and assigns from any and all liability for personal injury, death, property damage, or otherwise arising out of WHI's or its agents' operations under this Agreement or WHI's use of Owner's property, unless such injury, death, or property damage is the result of Owner's negligent acts or omissions or those of its members, officers, directors, employees, third party lessees, agents, successors, and assigns.

#### **X. Term**

This Agreement and the easements, rights and uses granted herein shall terminate upon the latter of (i) the cessation of operations for the production of oil, gas and other hydrocarbons substances from the Subject Lands or (ii) upon the expiration or termination of the rights of WHI or any successor to any of the mineral interests underlying the Subject Lands pursuant to the terms of the Oil and Gas Lease. Except as otherwise provided herein, upon termination of the Agreement, WHI shall have one hundred and eighty (180) days within which to remove all equipment, materials and improvements on the Subject Lands. In accordance with state regulations, WHI shall reclaim each oil and/or gas well site, as nearly as reasonably practical, to its original condition and shall re-seed each such site if applicable.

#### **XI. Restoration and Reclamation**

Upon the final termination of drilling activities and production and exploration of WHI's leasehold on the above property, WHI shall, at its sole cost and expense, return all roads and other rights-of-way or sites as near as practicable to their original condition, and reseed them if applicable to such original condition in accordance with Owner's specifications, unless otherwise agreed. Autogates shall be removed and fences restored as near as practicable to their original condition, unless otherwise provided or agreed by the parties.

## **XII. Amendments and Notice**

This Agreement may not be amended except by writing signed by both parties. The electronic signature of a party delivered by facsimile or email shall be valid and binding. Any formal notice, payment, statement, or other communication provided for in this Agreement must be in writing and be (1) delivered by facsimile or email with acknowledgement of receipt by the other party; or (2) mailed by United States first class, certified, or registered mail, postage prepaid; (3) sent by express delivery service; or (4) delivered in hand, to the party's address as set forth in the introductory paragraph of this Agreement, or such other address as either party hereto may designate from time to time by giving ten days prior written notice to the other party.

## **XIII. Further Assurances**

The parties shall execute any and all other documents which may be necessary in order to effect the terms and purposes of this Agreement.

## **XIV. Applicable Law and Dispute Resolution**

In the event of any dispute between the parties arising in connection with this Agreement, the parties agree to attempt to resolve any such dispute by good faith negotiations prior to initiating any mediation or judicial action. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to any conflict of laws provision. Venue for any legal action arising out of or concerning this Agreement shall be the District Court for the City and County of Denver or the United States District Court in Denver, Colorado, as applicable.

## **XV. Severability**

This instrument may be executed in any number of counterparts, each of which shall be considered an original for all purposes. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, the offending provision shall be interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law.

## **XVI. Successors and Assigns**

All rights and obligations under this Agreement shall run with the lease and the lands and shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of each party.

**OWNER: FPI Burlington Farms LLC**



By:  
Name:  
Title:

DATED this 7<sup>th</sup> day of September, 2022.

**WAVETECH HELIUM, INC.**



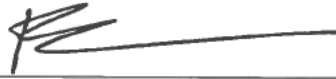
By: Igor Gendelman, Vice President

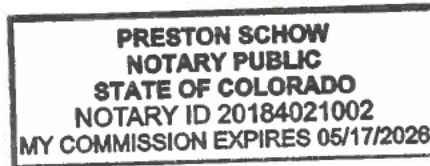
DATED this 7<sup>th</sup> day of August, 2022.

STATE OF COLORADO )  
 )ss  
COUNTY OF DENVER )

On the 7 day of September, 2022, before me, the undersigned authority, personally appeared Luca Fabbri, personally known to me or proved to me by satisfactory evidence to be the person whose name is subscribed to the foregoing instrument as President of FPI Burlington Farms LLC, and acknowledged to me he/she/they executed the same with property authority, and as the act of such corporation for the purposes therein stated.

My commission expires: 5/17/2026

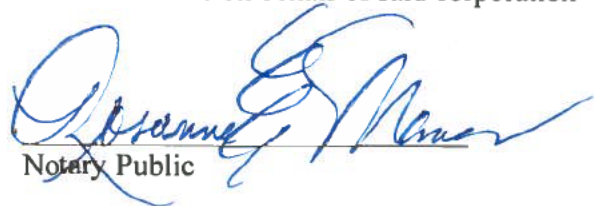
  
\_\_\_\_\_  
Notary Public

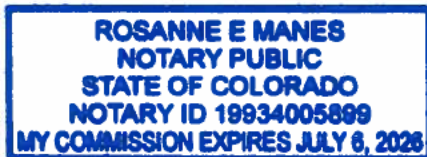


STATE OF COLORADO )  
 )ss  
COUNTY OF DENVER )

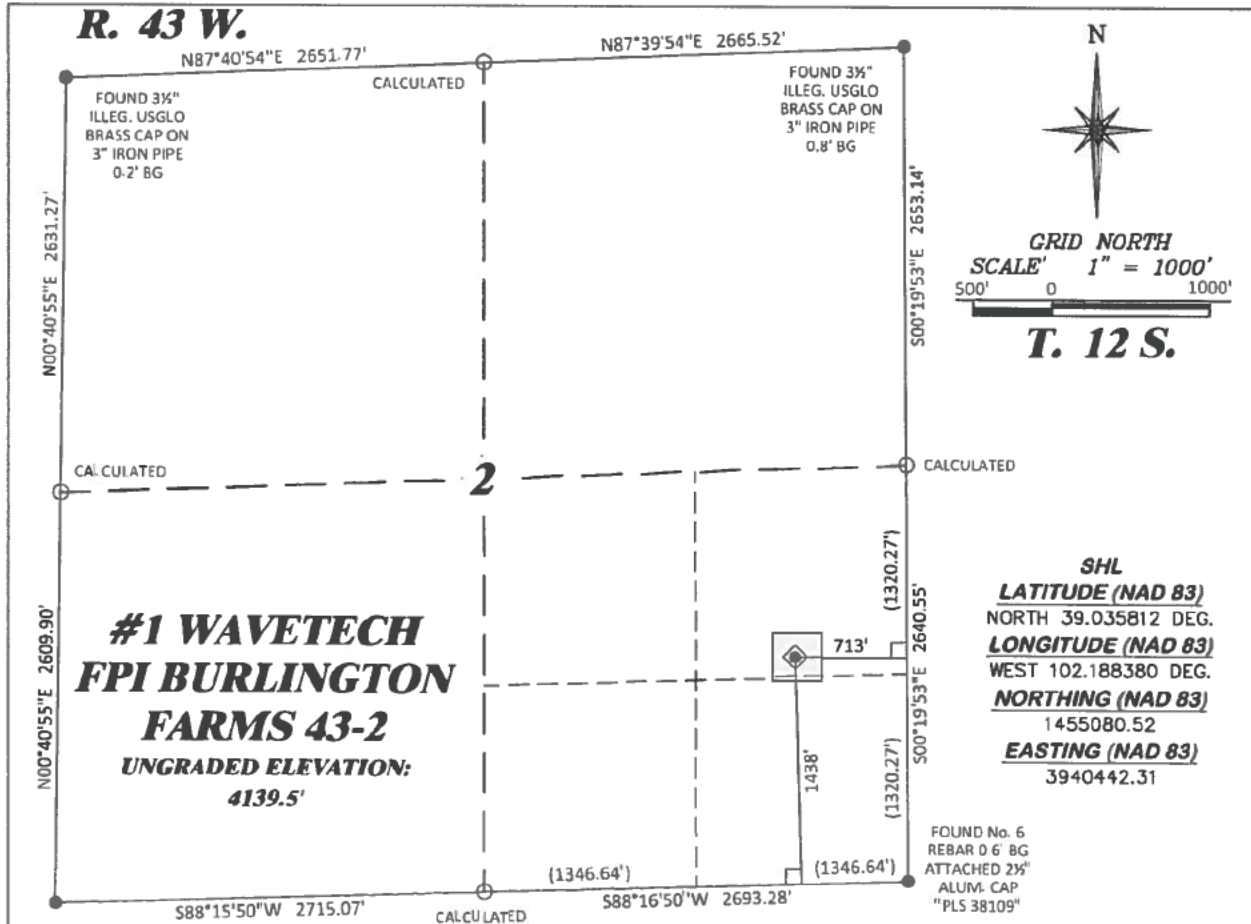
On the 7<sup>th</sup> day of September, 2022, before me appeared Igor Gendelman, the signor of the above instrument, who duly acknowledged to me that he executed the same on behalf of said corporation as Vice President.

My commission expires: 7-6-26

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



# EXHIBIT A



**LEGEND**

- ◆ WELL LOCATION
- L DENOTES 90° TIE
- FOUND MONUMENT AS NOTED
- CALCULATED POSITION

**BASIS OF BEARINGS, ELEVATIONS & DATUM**  
SPCS, CO CENTRAL ZONE, NAD 27, BASED ON NGS MONUMENT "POORMAN" AN IRON ROD IN SLEEVE, HAVING A PUBLISHED POSITION OF:  
NAD83(2011)  
LAT 39° 00' 13.984" NORTH  
LONG 102° 16' 42.824" WEST  
NAVD88 ELEVATION: 4206.93"

THE EAST LINE OF SECTION 2, MONUMENTED AS SHOWN AND BEARING 500°19'53"E.

**NOTES**

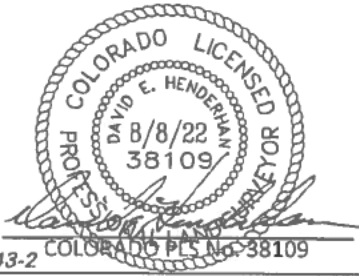
1. GPS OPERATOR J. MONTOYA OBSERVED A PDOP OF 2.1.
2. ALL GPS OBSERVATIONS ARE IN COMPLIANCE WITH COGCC RULE No. 215.
3. EXISTING IMPROVEMENTS WITHIN 2000' OF LOCATION. SEE LOC. DRAWING.
4. SURROUNDING SURFACE USE IS CULTIVATED CROPLAND.

**SURVEYOR'S STATEMENT**

I, DAVID E. HENDERHAN, AN EMPLOYEE AND AGENT ON BEHALF OF D.R. GRIFFIN & ASSOCIATES, INC. STATE THE PLAT HEREON IS A CORRECT REPRESENTATION OF A SURVEY MADE UNDER MY SUPERVISION ON THE 8th DAY OF JULY, 2022 OF THE SHOWN #1 WAVETECH FPI BURLINGTON FARMS 43-2 AND THAT THE LOCATION HAS BEEN STAKED ON THE GROUND AS SHOWN ON THIS PLAT.

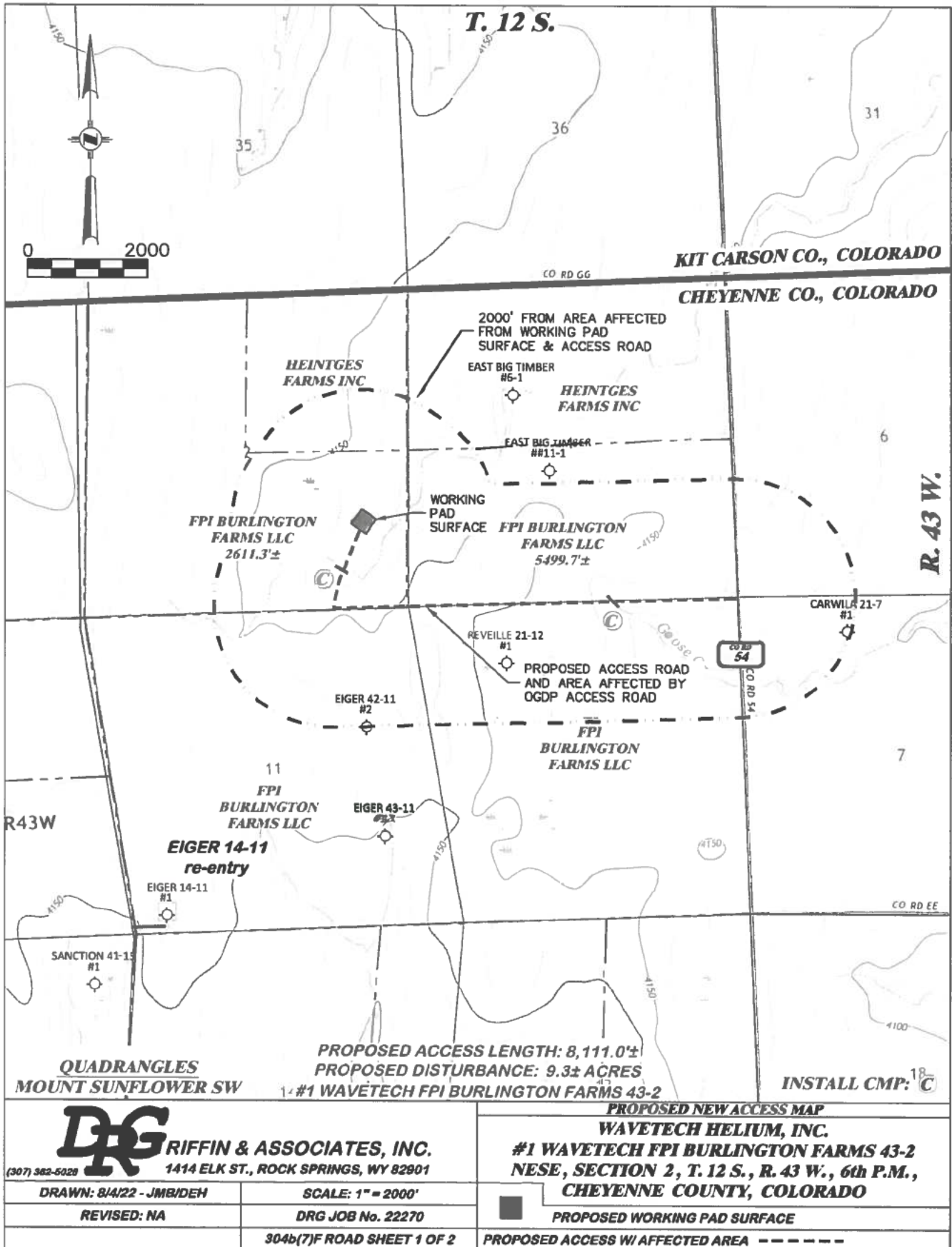
Notice: In accordance with Colorado State Law, any legal act on based upon any defect in this survey plat must commence within three (3) years after first discovery of such defect. In no event, may any action based upon any defect in this survey plat be commenced more than ten (10) years from the date of certification shown hereon.

#1 WAVETECH FPI BURLINGTON FARMS 43-2



|   |                                 |   |
|---|---------------------------------|---|
| <p><b>DRG RIFFIN &amp; ASSOCIATES, INC.</b><br/>(307) 362-5028 1414 ELK ST., ROCK SPRINGS, WY 82901</p> |                                 | <p><b>PLAT OF DRILLING LOCATION IN NESE, SECTION 2, FOR WAVETECH HELIUM, INC.</b></p> <p>1,438' F/SL, &amp; 713' F/EL, SECTION 2, T. 12 S., R. 43 W., 6TH P.M., CHEYENNE COUNTY, COLORADO</p> |
|   |                                 |   |
| <p><b>REVISED: NA</b></p>   | <p><b>DRG JOB No. 22270</b></p> |   |
|   |                                 | <p><b>EXHIBIT A</b></p>   |

# EXHIBIT B

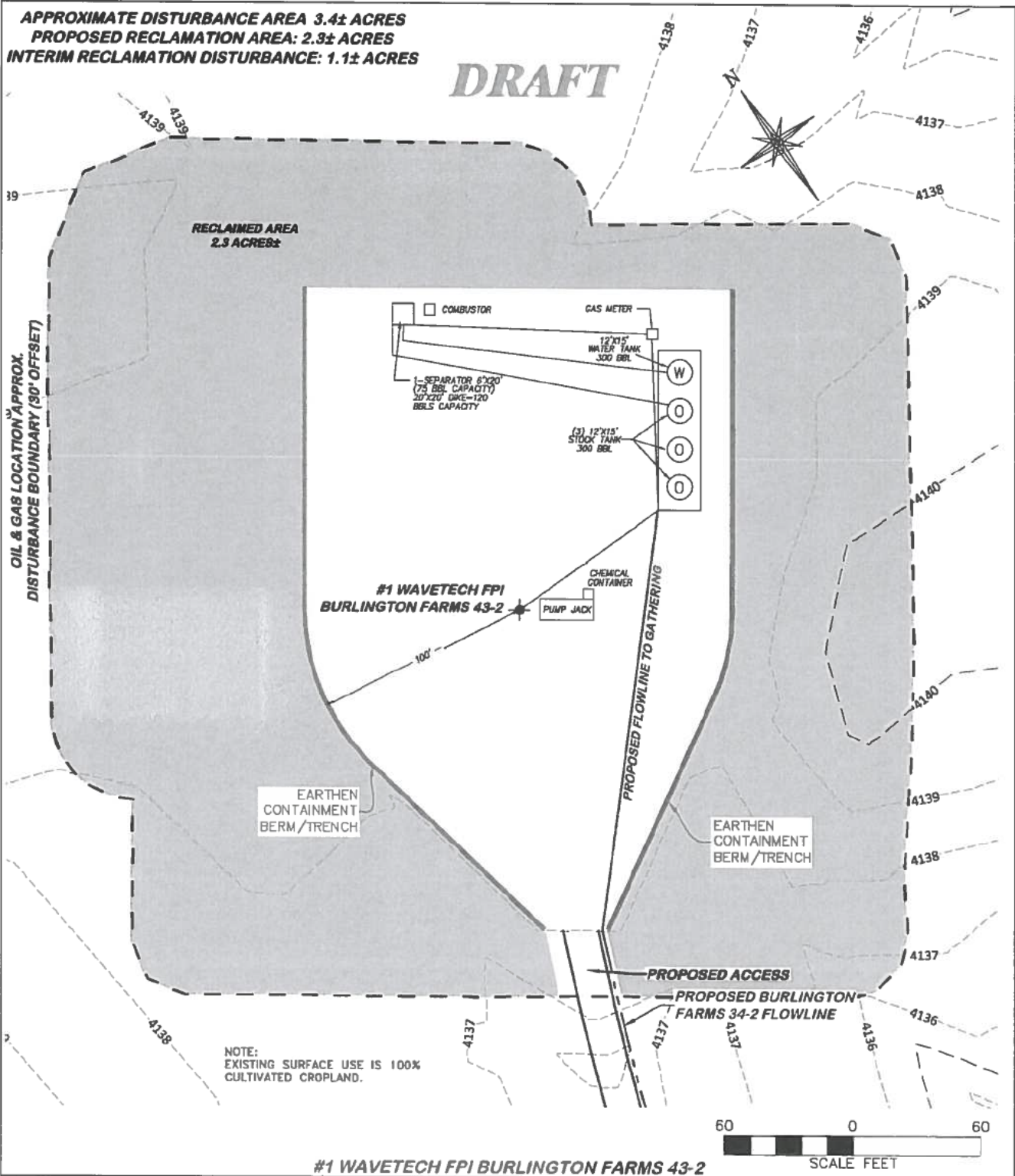





# EXHIBIT B

APPROXIMATE DISTURBANCE AREA 3.4± ACRES  
 PROPOSED RECLAMATION AREA: 2.3± ACRES  
 INTERIM RECLAMATION DISTURBANCE: 1.1± ACRES

## DRAFT



#1 WAVETECH FPI BURLINGTON FARMS 43-2

|   |                      |
|---|----------------------|
|  <b>DRG RIFFIN &amp; ASSOCIATES, INC.</b><br>(307) 382-5028 1414 ELK ST., ROCK SPRINGS, WY 82901 |                      |
| DRAWN: 8/4/22 - JMB/DEH   | SCALE: 1" = 60'      |
| REVISED: NA   | DRG JOB No. 22270    |
|   | 304c(16) RECLAMATION |

**INTERIM RECLAMATION  
 WAVETECH HELIUM, INC.**  
**#1 WAVETECH FPI BURLINGTON FARMS 43-2**  
**NESE, SECTION 2, T. 12 S., R. 43 W., 6th P.M.,**  
**CHEYENNE COUNTY, COLORADO**