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COGCC

## SURFACE DAMAGE AND RELEASE AGREEMENT

This Surface Damage and Release Agreement ("Agreement") is made and entered into this 1<sup>st</sup> day of June, 2006, by and between **Michael R. Witman**, ("Owner"), and **Apollo Operating, LLC**, ("Operator"); 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 located in Weld County, Colorado as more specifically described as follows ("Lands"):

Township 4 North, Range 67 West, 6<sup>th</sup> P.M.

Section 2: Lot B of that Recorded Exception No. 1059-02-4-RE299, recorded in the records of the County of Weld, the State of Colorado, being a part of the SW/4 of the SE/4 of said Section.

Operator owns a working interest in valid leases taken in its name covering all or portions of the Lands or lands pooled or included in a spacing unit therewith (each a "Lease," collectively, the "Leases"). Additionally, Operator has responsibilities under a Joint Operating Agreement ("JOA") with respect to the Lands.

2. **OPERATOR'S OIL AND GAS OPERATIONS ON THE LANDS.** Operator intends to drill or cause to be drilled oil and/or gas Well on the Lands, as depicted approximately on Exhibit "A" attached hereto ("Well"). In order for Operator to drill, construct, complete, produce, maintain, and operate the Well and all facilities associated therewith, including, but not limited to, access roads ("Access Roads"), pipelines, flow lines, separators, tank batteries, electric lines and any other facilities or property necessary for Operator to conduct operations on the Well (each a "Facility," collectively, the "Facilities"), it is necessary that Operator enter and utilize a portion of the surface of the Lands. Operator agrees that it shall not conduct drilling operations on the irrigated parts of the Lands during the time period from April 1 through October 31<sup>st</sup> of any year.

The Parties enter into this Agreement to evidence their entire agreement regarding the payment of surface damages, entry, surface use, and any other matters relating to Operator's use of the Lands.

3. **LOCATION.** The approximate location of the Well, the Access Roads to the Well sites and certain other Facilities to be constructed on the Lands are depicted on Exhibit "A." The primary access route will be used unless conditions are such that its use is impractical due to serious weather conditions (including extreme mud or marsh). If the primary access route is unavailable, the alternate route will be used. However, Operator shall at all times use its best and most reasonable efforts to utilize only the primary access route.

Any material changes to the Well, Access Roads and Facilities locations may be made by Operator with the consent of Owner, which will not be unreasonably withheld, but will not unduly interfere with Owner's existing use of the surface estate. Operator agrees not to use any more of the surface of the Lands than is reasonably necessary to conduct its operations; provided, however, that each Well site will not exceed 1.75 acres, or 220 feet by 350 feet in area, absent written consent from the Owner.

**4. 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"), and applicable Colorado statutes and case law.

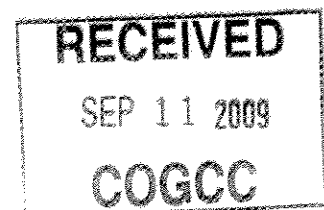
**5. COMPENSATION AMOUNT.** Operator will pay Owner the sum of \$ 5,000.00 Amount) for each Well site or any surface use, prior to the commencement of operations for each such Well. The Amount shall be deemed full and agreed consideration for all damages caused or created by reason of the reasonable and customary ingress, egress, rights-of-way, drilling, completion, production and maintenance operations associated with the Well and Facilities. Such damages will include, without limitation, damage to growing crops and crop land; the removal, transportation and care of any livestock; the re-seeding, construction and use of access roads; and the preparation and use of the Well site areas. Any subsequent major operations for said Well (refrac, deepening, redrilling, etc.), except in case of emergency, shall require 10 days prior notice to Owner. Operator shall pay Owner all actual damages caused by said subsequent operations

**6. ADDITIONAL SURFACE USE PROVISIONS, ACCESS ROADS, FENCES AND FACILITIES.** With respect to its operations on the Lands, Operator will comply with the following provisions:

**A. Access Roads:**

- (1) Access Roads will not exceed 20 feet in width.
- (2) Operator will insure that all vehicles accessing the Lands on its behalf remain on the Access Roads.
- (3) Operator agrees to place a single strand electric fence on both sides of Access Roads.
- (4) Operator agrees to back-slope all Access Roads.
- (5) Operator will provide Owner with a minimum of 10 days prior written notice before restoring the surface of all Access Roads to be permanently abandoned by Operator. No later than 10 days following receipt of such notice, Owner may elect, in writing, not to have such Access Roads abandoned by Operator. In such event, Operator will have no liability under this Agreement, the Lease, or otherwise, to restore the surface of the Lands utilized as Access Roads. Failure to timely respond will be deemed as Owner's election that Operator proceed with the abandonment of the Access Roads and the restoration of the surface thereof.
- (6) Operator will stockpile and save any topsoil removed while constructing Access Roads for rehabilitation or re-seeding as reasonably directed by Owner.
- (7) Operator will maintain all Access Roads in good repair and condition, and Operator shall not haul rocks on roads and the well sites in a form larger than 3/4" gravel.

**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 original contour as nearly as is reasonably practicable, and re-seeded if so requested by Owner; provided however, that Operator's intent to abandon any Access Roads will be subject to the provisions of Paragraph 6(A) herein.

(8) All access and use of lands except for the well head shall be temporary for operations. All roads and location construction shall be removed after drilling operations.

(9) Well head access shall be through a daisy chained locked gate in the North East corner of the lands. Operator personnel shall enter and exit lands through that gate ensuring that any cattle within that pasture do not escape. A cattle guard shall be located at the gate to issue this.

C. Other:

(1) Operator will install culverts on the Lands that may be necessary to maintain present drainage and irrigation otherwise affected by its operations on the Lands.

(2) If by reason of the activities of the Operator, including, but not limited to, drilling, completing, equipping, and operating of the Well, there is damage to personal property of the Owner, including, but not limited to, irrigation Well, fences, culverts, bridges, pipelines, ditches, or irrigation systems, and for which Owner has not been previously compensated pursuant to Paragraph 5, 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 Well construction and Operator will repair or replace such items after consultation with the Owner within 15 days of occurrence.

(3) 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 Well will be removed and disposed away from the Lands no later than 30 days after the completion of the Well. No such items will be burned or buried on the Lands.

(4) Operator is required to remove casing to a depth of 6 feet below surface within 90 days following cessation of operations.

(5) During drilling operations the well sites and any pits shall be electric fenced. 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.

(6) All guy line anchors for drilling and completion rigs shall be immediately removed after such work is completed.

Operator agrees to fence off the perimeter of the well sites with temporary fencing.

(7) Operator will also install temporary cattle guards where necessary and shall be responsible for restoring Owner's existing fence to its original condition at any point of access.

(8) If economically and legally feasible Operator will drill on Beverly's property.

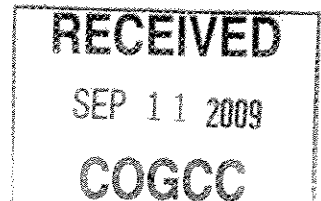
(9) Well shall be placed in the farthest North East corner of the property within the 400' drilling window, and in accordance with COGCC regulations.

(10) Production facilities shall not be located on the property.

(11) Access road shall be from the Northeast.

(12) Well head shall be kept to a minimal.

(13) If within the term of this agreement but before a well is drilled, Colorado law changes concerning severed surface rights, this agreement shall be subject to any new law.



**7. DEFAULT AND RIGHT TO CURE.** In the event of alleged default by Operator in the payment of any of the sums hereinabove provided to be made, in obligations to be performed, or any other terms, conditions or covenants of this Agreement, 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 allege default. Receipt of the certified mail shall be deemed effective 3 days after the mailing unless sooner received by Operator.

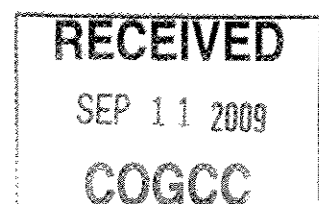
Except as otherwise agreed in writing, no waiver by Owner of any breach by the Operator of any of its obligations, agreements, or covenants hereunder will be deemed to be a waiver of any subsequent or continuing breach of the same, nor will any forbearance by Owner to seek a remedy for any breach by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

**8. INDEMNITY/RELEASE.** Owner hereby releases and agrees to hold harmless Operator from any and all liability and further payment, other than what has been provided herein, for 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 which are described in and permitted by this Agreement, and for those operations which the Amount has been paid and received by Owner pursuant to this Agreement.

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 premises at the request of Operator.

**9. WAIVER OF 30-DAY NOTICE.** Owner hereby waives the minimum 30-day written notice requirement for operations to begin and any other notice or consultation requirements of the COGCC. Without waiving the foregoing, Operator agrees it will provide an initial notice to Owner after it has submitted a request for permit to drill from the COGCC.

**10. NOTICE FOR ADDITIONAL OPERATIONS.** Operator will comply with COGCC rules and regulations requiring that advance notice be provided to Owner for subsequent operations on the Well, including, but not limited to, reworking operations thereto.



11. **NOTICES.** Notice by either Party will be promptly given, orally if possible (with the exception of the default notice described in Paragraph 7), with subsequent written confirmation sent by United States mail, postage prepaid and addressed to either Party at the address as designated below; or to such other place as either Party may from time to time designate by notice to the other:

Owner

Michael R. Witman  
23019 WCR 21 3/4  
Milliken, CO 80543

Operator

Apollo Operating, LLC.  
Attention: Jessie L. White  
1557 Ogden Street, Suite 300  
Denver, CO 80216  
Phone: (303) 830-0888, Fax: (303) 830-2818

12. **BINDING EFFECT.** The covenants and conditions herein contained and all of the provisions of this Agreement will inure to the benefit of and will be binding upon the Parties hereto, their respective heirs, representatives, successors or assigns. Owner agrees to contact any and all tenants of Lands or any other third parties utilizing the surface of the Lands that may be affected by Operator's activities on the Lands. It will be Owner's sole responsibility to advise such third parties of the existence of this Agreement and Operator's right to utilize the surface of the Lands pursuant to this Agreement for the payment of any consideration, if any, due such third party from Owner.

13. **CONFIDENTIALITY.** The Parties agree to keep the terms and conditions of this Agreement confidential and will not disclose such matters to any third party without the advance written consent of the other, or if ordered to do so in a legal proceeding. While the specific terms hereof are to remain confidential between the Parties, Operator or Owner may record a memorandum of this Agreement in Weld County, Colorado.

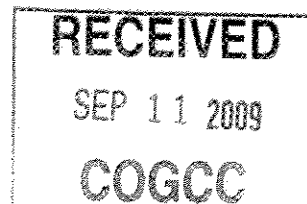
14. **ENTIRE AGREEMENT.** This instrument contains the entire agreement between the Parties and may not be modified orally or in any other manner other than by agreement in writing signed by all Parties or their respective successors or assigns.

15. **TERMINATION.** If Operator does not commence operations for the Well within three years from this date, this Agreement will terminate in its entirety without penalty to either Party, or will otherwise be renegotiated. If owner wishes to extend this agreement beyond three years, owner may do so before or after termination for additional years as determined by owner.

16. **COUNTERPARTS.** This Agreement may be executed by facsimile, in counterparts, each of which will be considered an original and enforceable against either Party.

17. **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 Weld County, Colorado.

18. **ATTORNEY'S FEES AND COSTS.** The Parties agree that the prevailing Party in any action resulting from a breach of this Agreement will be entitled to its reasonable attorneys' fees and costs incurred therein.



19. **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.

20. **SUCCESSORS.** This Agreement constitutes a 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 successors, administrators, trustees, executors and assigns.

IN WITNESS WHEREOF, the Parties have set their hands, the day and year first written above.

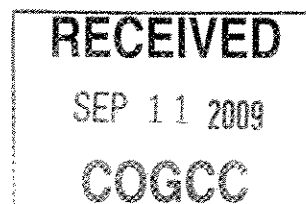
**Operator: Apollo Operating, LLC**

By: \_\_\_\_\_  
Name: Jessie L. White  
Title: \_\_\_\_\_

*per WL Douglas  
Agent.*

**Owner:**

By: *Michael R. Witman*  
Name: **Michael R. Witman**

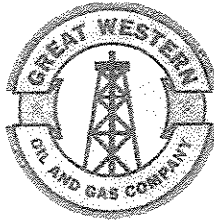




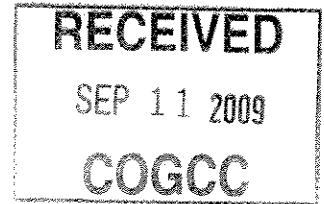
WCD

COGCC

1700 Broadway, Suite 1170  
Denver, CO 80209  
Tel: 303.393.0033  
Fax: 303.393.8636



503 Main Street  
Windsor, CO 80550  
Tel: 970.686.8831  
Fax: 970.686.2014



June 2<sup>nd</sup>, 2009

Michael R. Witman  
23019 WCR 21 ¾  
Milliken, CO 80543

RE: Release of Surface Damage and Release Agreement

Township 4 North, Range 67 West, 6<sup>th</sup> P.M.

Section 2: Lot B of that Recorded Exception No. 1059-02-4-RE299, recorded in the records of the  
County of Weld, the State of Colorado, being a part of the SW/4SE/4 of said Section.

Dear Michael R. Witman:

As requested by Owner, Great Western Oil and Gas Company, LLC chooses not to extend the Surface  
Damage And Release Agreement by and between Michael R. Witman, (Owner) and Apollo Operating, LLC,  
(Operator), dated June 1<sup>st</sup>, 2006, covering the above described lands.

Sincerely

Gary P. Steele, Landman for  
Great Western Oil and Gas Company, LLC



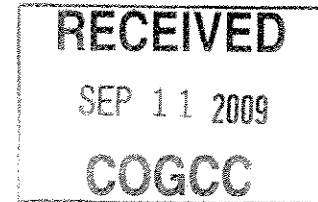
**MICHAEL R. WITMAN**

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23019 WCR 21 3/4  
Milliken, CO 80543  
(970) 576-6069

September 9, 2009

Great Western Oil and Gas  
503 Main Street  
Windsor, CO 80550



RE: Surface Damage and Release Agreement  
Township 4 North, Range 67 West, 6<sup>th</sup> P.M.  
Section 2: Lot B of that Recorded Exception No. 1059-02-4-RE299, recorded in  
the records of the County of Weld, the State of Colorado, being a part of  
the SW/4SE/4.

To whom it may concern

I Michael R. Witman is extending the Surface Damage and Release Agreement that I enter into with Apollo Operating, LLC. For and additional three years and reserve the right to extend for additional years at anytime as stated in Paragraph 15 of the Agreement.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael R. Witman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael R. Witman

**MIKE WITMAN**

23019 WCR 21 3/4  
Milliken, CO 80543  
(970) 576-6069

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**COGCC**

September 10, 2009

To whom it may concern,

I Michael R. Witman, surface owner, would like to have a consultation meeting with Great Western Oil and Gas Company to discuss the renewal and use of a Surface Use Agreement I agreed to with Apollo Operating LLC.

Sincerely,



Michael R. Witman

The proposed location of the well and associated tank battery and flow lines or equipment are not in agreement with the signed surface use agreement created by Apollo operating, nor are these locations in agreement with current or future land use. A copy of this document is attached.