

## MEMORANDUM OF SURFACE AND ROAD USE AGREEMENT

The undersigned, OXY USA WTP LP, P. O. Box 27570, Houston, Texas 77046-0521 ("Oxy"), and Berry Petroleum Company, 1999 Broadway Street, Suite 3700, Denver, Colorado 80202 ("Berry"), have entered into a Surface and Road Use Agreement dated effective January 15, 2010 (the "Agreement"). Under the Agreement, Oxy granted Berry certain non-exclusive rights to use the surface of the below described lands located in Garfield County, Colorado for the drilling of oil and gas wells and the construction of roads and pipelines in accordance with the terms and conditions of the Agreement.

The following lands located in Garfield County, Colorado are subject to the Agreement:

Township 6 South, Range 97 West

Section 15: S1/2 N1/2, S1/2

Section 21: NW/4, SE/4

Section 22: NW/4, SE/4

Section 28: NW/4, SE/4

Section 33: NW/4

The Agreement with all of its terms and provisions is incorporated into this Memorandum for all purposes. This Memorandum is placed of record for the purpose of giving notice of the Agreement.

WITNESS THE EXECUTION HEREOF THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2010.

**OXY USA WTP LP**

By: OXY USA Inc., General Partner


By: 

Name: Alan Schwartz, Attorney-in-Fact

**BERRY PETROLEUM COMPANY**

By: 

Name: Daniel G. Anderson

Title: Vice President 

## SURFACE AND ROAD USE AGREEMENT

This SURFACE AND ROAD USE AGREEMENT (the "Agreement") is made and entered into as of January 15, 2010 (the "Effective Date") by and between OXY USA WTP LP, P.O. Box 27757, Houston, Texas 77227-7757 ("OXY") and Berry Petroleum Company, 1999 Broadway Street, Suite 3700, Denver, CO 80202, ("Berry"). OXY and Berry are sometimes referred to herein individually as a "Party" and together as the "Parties."

WHEREAS, Berry is the present owner of leasehold rights to certain conventional oil and gas and other minerals on and under the following described lands in Garfield County, Colorado (the "Lands"):

Township 6 South, Range 97 West

Section: 21: NW/4, SE/4

Section: 22: NW/4, SE/4

Section: 28: NW/4, SE/4

Section: 33: NW/4

and

WHEREAS, OXY is the surface owner of the Lands; and

WHEREAS, Berry desires access to OXY's existing road on the Lands (as shown in blue on the attached Exhibit "A," the "Existing Road") and to construct up to five (5) pads (hereinafter referred to individually as a "Pad", and collectively as the "Pads"), (at or near the locations shown in yellow on Exhibit "A", on the Lands for the drilling of wells to produce oil and/or gas; and

WHEREAS, Berry also desires to construct up to three (3) pipelines within a single right-of-way to transport water, oil and/or gas to and from the Lands, and up to four access roads (each, an "Access Road", and collectively, the "Access Roads") leading to the Pads; and

WHEREAS, OXY and Berry desire to enter into this Agreement for the purpose of specifying the terms pursuant to which Berry may use the Existing Road and the surface estate of the Lands to (a) conduct operations to drill, equip and operate wells on the Pads, and (b) to construct and use pipelines and Access Roads in Sections 15, 21, 22, 28 and 33 of Township 6 South, Range 97 West, Garfield County, Colorado.

NOW, THEREFORE, in consideration of the premises stated herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Parties, it is agreed as follows:

1. Commencing on the date, shown above and extending to January 31, 2015, and, with respect to any well on a Pad, as long thereafter as there is commercial production of oil and/or gas, OXY agrees to allow Berry non-exclusive (a) access to the Lands and (b) subject to existing rights-of-way, easements and use agreements to which OXY is a party affecting the Existing Road, the right to use of the Existing Road, for the limited purpose of ingress and egress for drilling, completing, operating, maintaining and/or plugging and abandoning its well(s) located on the Lands. Nothing herein shall be deemed or construed as granting to Berry any right to use any of OXY's water or water rights in, on, under or appurtenant to the Lands; and any such rights shall be granted, if at all, pursuant to a separate agreement between OXY and Berry.

2. OXY agrees to (a) the layout of the Pads, the planned Pad reclamation, the pipelines, and the Access Roads as depicted on the attached Exhibits B-1-B-5, and (b) the pipeline development map shown on the attached Exhibit A, subject to OXY's prior written approval of the final pipeline plan as provided in Section 21 of this Agreement. Any changes to the attached Exhibits B-1-B-5 and Exhibit A are subject to the prior written approval of OXY; which approval may be withheld in OXY's sole and absolute discretion.

3. Berry shall be held responsible for the proper handling of storm water runoff and erosion control and shall construct the Pads, Access Roads and pipelines in compliance with all applicable rules and regulations of the Colorado Department of Public Health and Environment ("CDPHE"), including without limitation rules and regulations relating to handling of storm water runoff and to erosion control, and all other applicable federal, state, municipal and other local laws, rules, regulations, orders, ordinances and licensing requirements (collectively, "Laws"), and shall take all necessary precautions in the construction of the Pads, Access Roads and pipelines, to insure that such Pads, Access Roads and pipelines are stable and are not a hazard to the area, any road or other structure (including any OXY assets). Prior to the

WITNESS THE EXECUTION HEREOF THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2010.

OXY USA WTP LP

By: OXY USA Inc., General Partner

By: Alan Schwartz

Name: Alan Schwartz, Attorney-in-Fact  
ISM

BERRY PETROLEUM COMPANY

By: [Signature]

Name: James G. Anderson

Title: Vice President, Production



STATE OF )

COUNTY OF )

The foregoing instrument was acknowledged before me this 8th day of February 2009 by Alan Schwartz, as Attorney-in-Fact of OXY USA Inc., a Delaware corporation, as General Partner of OXY USA WTP LP, a Delaware limited partnership on behalf of OXY USA WTP LP, and acknowledged to me that said corporation executed the same.

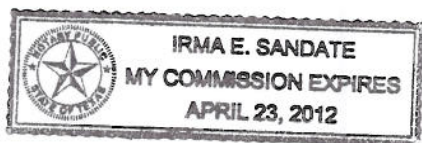
WITNESS my hand and official seal.

My Commission Expires:

4-23-2012

[Signature]

Notary Public



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

SUBSCRIBED AND SWORN to before me this 8th day of February, 2010, by Daniel G. Anderson, as Vice President of **Berry Petroleum Company**.

Witness my hand and official seal.

My Commission Expires: 5-8-2011  
(SEAL)

[Signature: Diana J. Pharo]  
Notary

