

10-1-01-N-116

## SURFACE USE AGREEMENT

Elton and Eunice Oltjenbruns, (hereinafter referred to as "Owner", whether one or more) whose address is 544 East Kellogg, Holyoke, Colorado 80734 and PRB Oil & Gas, Inc. (hereinafter referred to as "Operator") whose address is 1875 Lawrence Street, Suite 450, Denver, Colorado 80202, hereby agree as follows:

The Owner is the current owner of the surface estate to the Subject Lands described herein and the Operator represents that it owns or is the assignee of valid oil and gas leases covering all or a part of the Subject Lands described herein. This agreement between Owner and Operator provides that Operator and its agents and contractors will be allowed to enter onto and conduct surveying, drilling, completion, construction of pipelines, production operations, reworking operations and all additional operations associated therewith on Owners property (Subject Lands) and other neighboring lands.

Subject Lands situated in Phillips County, Colorado, described as follows, to-wit:

Township 9 North, Range 43 West, 6<sup>th</sup> P.M.  
Section 27: SW/4  
Township 9 North, Range 44 West, 6<sup>th</sup> P.M.  
Section 36: S/2

Operator desires to conduct operations to drill, complete and produce oil and/or gas wells on the Subject Lands or neighboring lands. The following shall set out those terms and conditions under which Operator may enter and conduct operations for so long as oil and/or gas is being produced or capable of being produced from any well drilled on the Subject Lands or other neighboring lands and whatever additional time is needed to complete surface remediation to COGCC standards on Subject Lands and other neighboring lands.

1. Operator will construct no permanent roads unless determined to be absolutely necessary and mutually agreed upon between Owner and Operator.
2. No recreational use of Subject Lands by Operator is allowed.
3. Possession of firearms on Subject Lands by Operator is prohibited.
4. Production well locations shall utilize no more than three (3) acres of land while drilling and no more than one (1) acre for permanent facilities.
5. As compensation for the herein described access, Operator will pay to Owner the following:

### WELL SITE LOCATION

Operator agrees to pay Owner as consideration for damages to the Subject Lands the sum of [REDACTED] for each drill site location. Such consideration shall be paid prior to the commencement of operations and shall cover damages caused by the drilling, construction and completion of each drill site, access roads (including "two track", all weather and

existing roads) and buried pipelines, buried electrical lines and buried water discharge lines and meter stations associated with each drill site.

**PIPELINE RIGHT OF WAY PAYMENT**

A payment of Fifteen Dollars (\$15.00) per rod shall be paid to Owner by Operator for any 3<sup>rd</sup> party, non-lease gas pipeline right-of-way. Owner agrees to grant, at Operators request, easements across the Subject Lands as necessary for the construction, installation, operation, replacement and maintenance of said lines.

6. Upon completion of drilling activities and production and exploration of the Operators Oil & Gas Lease(s), including plugging and abandoning of said wells, on the Subject Lands or other neighboring lands, Operator shall restore all roads and other types of rights-of-ways or sites as near as practicable to the original condition unless otherwise provided or agreed. All disturbed areas in pasture land or lands enrolled in the CRP program shall be reseeded with the appropriate seed mix unless otherwise provided or agreed. Cattle guards shall be removed and fences restored to as near as practicable to the original condition unless otherwise provided or agreed. Operator shall remove and dispose of all trash and debris and shall control noxious weeds in disturbed areas. Operator shall also take reasonable steps to mitigate the effects of its activities including surface remediation to COGCC standards.
7. Payments herein provided are acknowledged by Owner as sufficient and in full for damages, caused or created by reason of the responsible and customary entry, rights-of-way, drilling operations, additional operations associated therewith and subsequent operation of said well site(s). Operator shall use all reasonable steps to mitigate any damage caused by the drilling of the wells, including, but not limited to damage done to any existing streams.
8. All existing access roads used by Operator under this Agreement shall be maintained by Operator in as good a condition as, or better than, existed prior to Operators entry upon said lands. Operator shall maintain new access roads in usable condition.
9. Operator shall be responsible for noxious weed control within the right-of-way on the herein described access roads.
10. Operator agrees to defend, indemnify and hold Owner harmless from any and all claims, demands, or judgments connected directly with Operator's operations on the Subject Lands.
11. In the event of a default by the Operator in payment of any of the sums herein, Owner shall notify Operator, in writing, and Operator shall have sixty (60) days after the date of notification within which to cure such default and make the required payment. Waiver of any default shall not be deemed a waiver of subsequent defaults, but notice thereof shall be given by the Owner to Operator as herein provided. In the event the Operator does not cure the default within the time specified, the rights of the Operator hereunder shall be suspended, including

the right of ingress and egress, until such default has been cured, and Owner shall not be liable for any loss or damage to Operator occasioned by the Owner's enforcement of this provision.

12. If the Owner owns less than a 100% interest in the Subject Lands described herein the compensation described shall be proportionately reduced and paid accordingly.
13. Owner and Operator may include, by mutual agreement, additional (Subject Lands) now presently owned or acquired by Owner by making and entering into an "Amendment to Surface Use Agreement".
14. Owner agrees that Operator may file a "Memorandum of Surface Use Agreement" in the county records to provide evidence of the existence of this agreement covering the Subject Lands and any amendments thereto.

This agreement may be executed in multiple counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute, for all purposes, one agreement.

This agreement shall be binding upon the parties hereto, their heirs, administrators, successors and assigns and made effective as of this date set forth above.

Executed and made effective this 26 day of July, 2007.

OWNER:

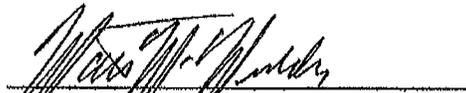
**Elton and Eunice Oltjenbruns**

  
Elton Oltjenbruns

  
Eunice Oltjenbruns

OPERATOR:

**PRB Oil & Gas, Inc.**

  
Matt M. Mulder  
Agent